

09:07:10

1 .  
2 STATE OF MINNESOTA DISTRICT COURT  
3 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

4

5

6 THE STATE OF MINNESOTA,  
7 BY HUBERT H. HUMPHREY, III,  
8 ITS ATTORNEY GENERAL,

9 AND

10 BLUE CROSS AND BLUE SHIELD  
11 OF MINNESOTA,

12 PLAINTIFFS,

13 VS.

14 FILE NO. C1-94-8565

15

16 PHILIP MORRIS INCORPORATED, R.J.  
17 REYNOLDS TOBACCO COMPANY, BROWN &  
18 WILLIAMSON TOBACCO CORPORATION,  
19 B.A.T. INDUSTRIES P.L.C., LORILLARD  
20 TOBACCO COMPANY, THE AMERICAN  
21 TOBACCO COMPANY, LIGGETT GROUP, INC.,  
22 THE COUNCIL FOR TOBACCO RESEARCH-U.S.A.,  
23 INC., AND THE TOBACCO INSTITUTE, INC.,

24

25 DEFENDANTS.

26

27 DEPOSITION OF  
28 CHERYL L. PERRY, Ph.D.

29

30 July 30, 1997

31

32 9:06 a.m.

33

34 REPORTED BY: JENNIFER S. SATI  
35 REGISTERED PROFESSIONAL REPORTER  
36 CERTIFIED REALTIME REPORTER  
37 RAY J. LERSCHEN & ASSOCIATES  
38 620 PLYMOUTH BUILDING  
39 MINNEAPOLIS, MINNESOTA 55402

1

DEPOSITION OF CHERYL L. PERRY, Ph. D.,

2 taken at the Law Offices of Robins, Kaplan, Miller &  
3 Ciresi, 2800 LaSalle Plaza, 800 LaSalle Avenue,  
4 Minneapolis, Minnesota, on the 30th day of July,  
5 1997, commencing at 9:06 a.m., before Jennifer S.  
6 Sati, Notary Public.

7

8 \* \* \* \*

9

A P P E A R A N C E S

10

11 On Behalf of the Plaintiffs:

12 Robins, Kaplan, Miller & Ciresi  
13 2800 LaSalle Plaza  
14 800 LaSalle Avenue  
15 Minneapolis, Minnesota 55402

16

BY: Roberta B. Walburn  
15 Gary L. Wilson

16

On Behalf of Philip Morris Incorporated:

17

Johnson & Tyler, P.C.  
18 2127 R Street, NW  
19 Washington, DC 20008

20

BY: Janet L. Johnson

21

Dorsey & Whitney  
22 Pillsbury Center South  
23 220 South Sixth Street  
24 Minneapolis, Minnesota 55402-1498

25

BY: Perry M. Wilson, III

26

27

1 On Behalf of Lorillard Tobacco Company:

2 Shook, Hardy & Bacon  
Market Square West  
3 801 Pennsylvania Avenue, NW, Suite 600  
Washington, D.C. 20004-2615

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BY: Allen R. Purvis

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I N D E X

EXAMINATION BY:

PAGE

MS. JOHNSON

6

\* \* \* \* \*

# EXHIBIT INDEX

7			
	NUMBER		MARKED
8	2505	Expert Report of Dr. Cheryl L. Perry, Ph.D. (No Bates numbers)	5
9			
10	2506	Curriculum Vita of Cheryl L. Perry (No Bates numbers)	5
11	2507	Cheryl Perry Discovery Documents, State of Minnesota Documents (No Bates numbers)	5
12			
13	2508	Document entitled TID - 660005261 (No Bates numbers)	5
14			
15	2509	Outline with tobacco industry documentation, 36 pp., (No Bates numbers)	5
16			
17	2510	Outline with tobacco industry documentation, 7 pp., (No Bates numbers)	20
18			
19	2511	Handwritten notes (No Bates numbers)	20
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22			
23			
24			
25			

5

1 (Defendants Exhibits 2505, 2506, 2507, 2508 and  
2 2509 marked for identification by the  
3 reporter.)

4  
5 CHERYL L. PERRY, Ph.D.  
6 the Witness in the above-entitled  
7 matter after having been duly  
8 sworn testifies and says as follows:

9

10 MS. JOHNSON: My name is Jan Johnson. I 09:07:14

11 represent Philip Morris. I'm with the law firm of 09:07:16

12 Johnson & Tyler in Washington, D.C. 09:07:18

13 MR. PURVIS: I'm Allen Purvis with Shook, 09:07:20

14 Hardy & Bacon representing Lorillard Tobacco 09:07:22

15 Company.

16 MR. PERRY WILSON: I'm Perry Wilson with 09:07:24

17 Dorsey & Whitney, and I'm the liaison counsel 09:07:26

18 representing the defendants. 09:07:28

19 MS. WALBURN: Roberta Walburn, Robins, 09:07:32

20 Kaplan, Miller & Ciresi, representing the 09:07:34

21 plaintiffs. 09:07:34

22 MR. WILSON: Gary Wilson, Robins, Kaplan 09:07:36

23 Miller & Ciresi, representing the plaintiffs. 09:07:40

24

25

6

1 EXAMINATION

2 BY MS. JOHNSON:

3 Q. Would you please state your full name for the 09:07:42

4 record. 09:07:42

5 A. Cheryl Leigh Perry. 09:07:44

6 Q. And is that Professor Perry or Dr. Perry? 09:07:46

7 A. Professor Perry. 09:07:48

8 Q. Professor Perry, have you ever had your deposition 09:07:50

9 taken before? 09:07:52

10 A. No, I haven't. 09:07:52

11 Q. Never. Let me just go over a few ground rules 09:07:54

12 before we start. I'm going to be asking you 09:07:56  
13 questions over the course of today and tomorrow and 09:08:00  
14 the court reporter is going to take down everything 09:08:02  
15 that you and I say. 09:08:02  
16 So it's very important that when I speak 09:08:04  
17 that I speak verbally and that when you respond that 09:08:08  
18 you respond verbally because even if we're 09:08:10  
19 communicating by nodding, she won't be able to take 09:08:12  
20 that down accurately. 09:08:14  
21 If at any time I ask you a question and 09:08:16  
22 you don't understand the question, please let me 09:08:18  
23 know and I'll try to rephrase the question. 09:08:20  
24 Otherwise, I'll assume that you understand the 09:08:22  
25 question that I'm asking you. 09:08:24

7

1 And we'll be taking a number of breaks 09:08:26  
2 during the course of today, but if at any time 09:08:38  
3 during the day you feel like you want to take a 09:08:40  
4 break, just speak up. 09:08:42  
5 We've got plenty of time; we've got today 09:08:42  
6 and tomorrow. 09:08:44  
7 MS. WALBURN: Jan, just to let you know, 09:08:46  
8 on the issue of breaks, I think we're probably going 09:08:48  
9 to lean to frequent breaks but short, every hour to 09:08:50  
10 hour and a half. 09:08:50  
11 MS. JOHNSON: And when you're ready for a  
12 break, speak up.  
13 BY MS. JOHNSON:

14 Q. Before we get started, I want to clarify a few 09:08:56  
15 things because between the documents produced for 09:08:58  
16 you and the documents produced for Paul Much, 09:09:00  
17 there's been some mix-up in the clippings and 09:09:04  
18 copies, so I just want to clarify what it is that 09:09:06  
19 has been produced for you. 09:09:08  
20 And I've premarked as Defense Exhibit 2505 09:09:10  
21 a document that is entitled "Expert Report of 09:09:16  
22 Dr. Cheryl L. Perry," and it's 21 pages. 09:09:18  
23 Would you please take a look at this 09:09:20  
24 document and see if that is the expert report that 09:09:22  
25 you prepared. 09:09:22

8

1 A. Yes, this looks like my expert report. 09:10:16  
2 Q. Okay, thank you. And I'm going to stand just so I 09:10:18  
3 can reach you here. We have marked as Defense 09:10:22  
4 Exhibit 2506 a May 1997 C.V. for Cheryl Perry. 09:10:28  
5 Is that the most recent and complete C.V. 09:10:30  
6 that you have to date? 09:10:30  
7 A. It is my most recent C.V. There may be a couple of 09:10:52  
8 papers that were in press. One paper that was in 09:10:56  
9 press was published. One paper was accepted for 09:11:00  
10 publication that wasn't on here. But for the most 09:11:04  
11 part, it represents my C.V. 09:11:08  
12 Q. And the one paper that is in press that's not 09:11:12  
13 reflected on the C.V., do you recall the title of 09:11:14  
14 that paper? 09:11:14  
15 A. It's -- no, I don't. 09:11:16  
16 Q. Do you recall the subject matter the paper's about? 09:11:20

17 A. Community strategies. Actually, it was a survey of 09:11:26  
 18 community leaders relating to our Project 09:11:30  
 19 Northland.  
 20 Q. I'm sorry, I couldn't hear you, relating to your 09:11:32  
 21 project? 09:11:32  
 22 A. Project Northland, a project that's on-going. 09:11:36  
 23 Q. Does that have to do with the topic of smoking? 09:11:40  
 24 A. No, it doesn't. 09:11:40  
 25 Q. The other item in publication, do you recall the 09:11:42

9

1 topic of that? 09:11:44  
 2 A. That has to do with community and school factors 09:11:48  
 3 related to predicting alcohol use. 09:11:54  
 4 Q. Predicting alcohol? 09:11:56  
 5 A. Use. It's in the C.V. It just says "in press," and 09:12:00  
 6 now it's actually made it out. 09:12:02  
 7 Q. Other than those two items, this is a pretty 09:12:04  
 8 complete and accurate C.V. 09:12:06  
 9 A. I think as of June 2 it was up-to-date. 09:12:10  
 10 Q. Defense Exhibit 2507 is a 168-page document that 09:12:20  
 11 lists Bates range numbers. And this was also 09:12:22  
 12 provided as an attachment to your expert report and 09:12:28  
 13 C.V. 09:12:28  
 14 Do you recognize this document? I don't 09:12:30  
 15 need for you to confirm that all those Bates numbers 09:12:32  
 16 are -- 09:12:34  
 17 A. I recognize the document. I was shown this. I 09:12:40  
 18 don't recognize each and every number, however. 09:12:42



19 Q. Now, you say you were shown this document. So this 09:12:44  
20 is not a document that you, yourself, prepared? 09:12:46  
21 A. No, this is a document that was prepared by the 09:12:52  
22 plaintiffs' counsel. 09:12:54  
23 Q. Do you know who prepared that document? 09:12:56  
24 A. I assume Roberta or Gary. 09:13:00  
25 Q. Roberta or Gary? 09:13:02

10

1 A. I don't know for sure. 09:13:04  
2 Q. You don't know who prepared that document, just 09:13:06  
3 someone -- 09:13:08  
4 A. Someone from Robins Kaplan. 09:13:10  
5 Q. Have you reviewed all of the documents that are 09:13:14  
6 represented by the Bates numbers in this document? 09:13:16  
7 MS. WALBURN: I'll object to that 09:13:20  
8 question. 09:13:20  
9 BY MS. JOHNSON:  
10 Q. You may answer the question. 09:13:24  
11 A. I'm not sure. 09:13:24  
12 Q. You're not sure? 09:13:26  
13 A. I'm not sure because I would have to go through each 09:13:28  
14 and every one and match it with -- 09:13:28  
15 Q. Because you didn't prepare that document, so you're 09:13:30  
16 not sure what's on there actually, right? 09:13:32  
17 A. I'm sure -- these are the documents that were given 09:13:36  
18 to me. As far as my understanding, these are the 09:13:40  
19 documents that were given to me during this 09:13:42  
20 process. 09:13:44  
21 Whether or not I've looked at them all or, 09:13:50

22           you know, or if they're accurate, you know, I can't       09:13:52  
23           make that distinction.                                       09:13:54  
24   Q.     Do you remember approximately when they were given       09:13:56  
25           to you?   09:13:56

11

1   A.     These documents?   09:13:58  
2   Q.     Uh-hm.   09:14:00  
3   A.     Over the course of the last year.                           09:14:06  
4   Q.     So since 1996?   09:14:08  
5   A.     Since 1996.    09:14:08  
6   Q.     Not before 1996?   09:14:10  
7   A.     No, not that I can -- no, not that I can remember       09:14:14  
8           anything before 1996 in terms of these documents.       09:14:18  
9   Q.     Let's put this back in the pile here.   Now, these       09:14:28  
10          documents are marked as 2508, Defense Exhibit 2508.       09:14:34  
11                       And when I received these documents, they     09:14:36  
12          were attached to an expert report of Paul Much.   Do     09:14:38  
13          you know Paul Much?                                       09:14:38  
14   A.     I don't know Paul Much.                                    09:14:40  
15   Q.     And --   09:14:40  
16   A.     I know he's involved with this case.                       09:14:44  
17   Q.     And we clarified that, in fact, these documents were     09:14:48  
18          part of your materials.   So I'm going to show you       09:14:52  
19          this document and ask you to just glance at this and     09:14:56  
20          see if these are your documents.                           09:14:58  
21                       And let me just briefly describe them.       09:15:00  
22          It's a pile of documents that are all similar.   They     09:15:02  
23          contain TID dash and then a series of numbers, 6,000     09:15:10

24 ranges, 5,000 ranges, 2,000 ranges. 09:15:12

25 So I'm going to let you look at these and 09:15:14

12

1 make sure that these are yours and not Mr. Much's 09:15:18

2 documents. 09:15:18

3 MS. WALBURN: So the record is clear, 09:15:28

4 Counsel, these documents were not attached to the 09:15:30

5 expert report of Paul Much when the plaintiffs 09:15:32

6 served it on the Dorsey law firm. 09:15:34

7 MR. JOHNSON: Right, I understand there's 09:15:38

8 some confusion. That's why I'm just taking the time 09:15:40

9 to clarify that these are Ms. Perry's documents. 09:15:44

10 BY MS. JOHNSON:

11 Q. Do those look like documents that you've prepared, 09:15:46

12 yourself, for this litigation? 09:15:48

13 A. They certainly do. 09:15:50

14 Q. Thank you. 09:15:50

15 MS. WALBURN: The record should just 09:15:52

16 reflect that Professor Perry has not had an 09:15:54

17 opportunity to look at every document in that stack, 09:15:56

18 but she has flipped through it quickly. And at 09:16:02

19 least the ones that appeared on flipping through 09:16:06

20 appeared to be documents that Professor Perry 09:16:08

21 prepared. 09:16:08

22 MS. JOHNSON: I will represent for the 09:16:10

23 record that by letter of July 24, I believe to you, 09:16:14

24 Roberta, we forwarded this precise set of materials, 09:16:18

25 you reviewed and confirmed that these were what you 09:16:20

1 had submitted to us as part of Cheryl Perry's expert 09:16:24  
2 report. 09:16:24  
3 And I just wanted, before we get started, 09:16:26  
4 to make sure that she did recognize this document. 09:16:28  
5 MS. WALBURN: My letter in response to 09:16:30  
6 your correspondence earlier was that we had looked 09:16:32  
7 at the materials in the time allotted, which did not 09:16:36  
8 allow us to do an exact comparison. 09:16:38  
9 And, again, as Professor Perry stated, it 09:16:40  
10 appears to be, at first glance, materials generated 09:16:42  
11 by Professor Perry. 09:16:44  
12 BY MS. JOHNSON: 09:16:44  
13 Q. Okay. Also, under correspondence on the 24th we 09:16:50  
14 received additional materials. 09:16:52  
15 A. 24th of? 09:16:54  
16 Q. July 24th. 09:16:56  
17 MS. JOHNSON: And I believe that was 09:16:56  
18 correspondence with you, Gary. 09:16:58  
19 MR. GARY WILSON: Yes. 09:17:00  
20 BY MS. JOHNSON:  
21 Q. And you sent us materials which in your cover letter 09:17:02  
22 was described as, quote, additional and revised 09:17:04  
23 notes compiled by Cheryl Perry and a directory of 09:17:08  
24 Ms. Perry's notes. I've marked that as Defense 09:17:10  
25 Exhibit 2509. 09:17:12

1	MR. GARY WILSON: I think the letter	09:17:16
2	listed other items, as well.	09:17:18
3	MR. JOHNSON: We'll get to those.	09:17:20
4	BY MS. JOHNSON:	
5	Q. So this is Defense Exhibit 2509. Would you please	09:17:24
6	take a quick look at those and see if those look	09:17:26
7	familiar to you?	09:17:28
8	A. Yes, those look familiar to me.	09:17:56
9	Q. Before you hand those back to me, I would like to	09:17:58
10	direct your attention to the last few pages of this	09:18:00
11	bundle.	09:18:02
12	A. Uh-hm.	09:18:02
13	Q. And it appears to be a computer log of WordPerfect	09:18:08
14	documents?	09:18:08
15	A. Uh-hm.	09:18:10
16	Q. Is that what this is?	09:18:12
17	A. It's a computer index.	09:18:14
18	Q. And is this an index that you prepared?	09:18:18
19	A. No, the computer makes it.	09:18:20
20	Q. I know the computer printed it out. Did you input	09:18:24
21	the data that is reflected on what the computer	09:18:26
22	printed out?	09:18:28
23	A. No. What happens is the -- this is a Power MAC, and	09:18:36
24	so, for example, when I reviewed document	09:18:40
25	1000273741, I reviewed that. I wrote up my notes.	09:18:50

1	And then I put it in a file called tobacco industry	09:18:56
2	documents you see up here.	09:18:58

3 Q. Okay.

4 A. On my computer, there's a little arrow, and it says 09:19:02

5 T-I-D-S, and that's what goes into that. And so -- 09:19:08

6 Q. "S" stands for summary? 09:19:10

7 A. No, it means plural. 09:19:12

8 Q. Okay. 09:19:14

9 A. So the computer generates the list. I just keep -- 09:19:20

10 it's like if you had a file cabinet and you had a 09:19:26

11 file folder, the file folder would say tobacco 09:19:30

12 industry documents and/or some, you know, these were 09:19:32

13 just summaries of them, so that's what the computer 09:19:34

14 does. So the computer generates the list. 09:19:40

15 Q. And the dates that are entered in the last column 09:19:44

16 that say "last modified" -- 09:19:46

17 A. Yeah. 09:19:46

18 Q. -- does that reflect modifications that you made to 09:19:50

19 the documents? 09:19:52

20 A. To each and every document, yeah. 09:19:54

21 Q. And just glancing through this, I see that some of 09:19:58

22 these go back to 1996; is that right? Do you see 09:20:04

23 that you made some entries back in 1996, and then in 09:20:08

24 January of '97 and February and March? 09:20:12

25 A. Yeah. 09:20:14

1 Q. So these things have been around for over a year; is 09:20:16

2 that right?

3 A. Yeah. 09:20:16

4 Q. Do you have any idea why they weren't turned over to 09:20:20

5 us until last week? 09:20:20

6 MS. WALBURN: I'm going to object to the 09:20:22

7 form. I think you've combined a number of things 09:20:26

8 that are not fair to combine in that question. 09:20:30

9 What do you mean by why they weren't 09:20:32

10 turned over until last week? 09:20:34

11 MR. JOHNSON: Are you through? 09:20:38

12 MS. WALBURN: Yes. 09:20:40

13 BY MS. JOHNSON:

14 Q. This document that you and I are looking at, the 09:20:46

15 computer list? 09:20:48

16 A. Uh-hm. You mean why wasn't the computer list turned 09:20:50

17 over to you? 09:20:52

18 Q. Did you give those to your lawyers just a few days 09:20:54

19 ago, or did you give it to them sometime -- 09:20:56

20 A. No, this list I just gave to them a few days ago and 09:21:00

21 they said, "We have to turn this over to the 09:21:02

22 lawyers." 09:21:02

23 So, you know, I didn't really because it's 09:21:06

24 on the computer, it doesn't show -- I didn't think 09:21:08

25 of it as a document. 09:21:10

17

1 Q. That's all. And as Gary pointed out in his cover 09:21:18

2 letter to me, he informed us that he had also 09:21:22

3 provided you with expert reports for three of the 09:21:24

4 defense experts? 09:21:26

5 A. Right. 09:21:28

6 Q. Dr. Ron Faber, does that sound familiar? 09:21:30

7 A. Vaguely. 09:21:32

8 Q. Dr. Edward Morse, does that sound familiar? 09:21:36  
9 A. Again, vaguely. 09:21:36  
10 Q. I think it's Dr. Hyman Berman? 09:21:40  
11 A. Yes. 09:21:40  
12 Q. And then you also received from plaintiffs counsel 09:21:44  
13 copies of the expert reports of all of the 09:21:48  
14 plaintiffs experts in this case; is that right? 09:21:50  
15 A. It's here, yes. 09:21:52  
16 Q. Do you have a list there of all the experts? 09:21:54  
17 A. I do have a list of experts. 09:21:56  
18 Q. And then you received one other item which I believe 09:22:02  
19 was the deposition transcript of Adam Jaffe, does 09:22:10  
20 that sound familiar? 09:22:10  
21 A. Yes. 09:22:10  
22 Q. Do you know who Adam Jaffe is? 09:22:14  
23 A. I know he's an expert witness for this case. I 09:22:18  
24 don't know Adam Jaffe. 09:22:20  
25 Q. Do you know what his area of expertise is in this 09:22:24

18

1 case? 09:22:24  
2 A. I believe -- could I take a look here? 09:22:28  
3 Q. Sure. 09:22:30  
4 A. Antitrust economics. 09:22:32  
5 Q. And do you have any explanation for why you were 09:22:44  
6 given a transcript of an antitrust expert? 09:22:48  
7 A. Because I wanted to read the deposition. I wanted 09:22:56  
8 to read the deposition. 09:22:58  
9 Q. What were you interested in about the deposition? 09:23:00



10 A. Having never been in a deposition, I wanted to see 09:23:04  
11 what a deposition was like. 09:23:04  
12 Q. And whose idea was it for you to read his 09:23:10  
13 transcript? 09:23:10  
14 A. I think it was a combination. I had shown interest 09:23:18  
15 that I wanted to read depositions so I knew what 09:23:20  
16 this -- this isn't a process one learns in graduate 09:23:24  
17 school, at least in my graduate school. So it's 09:23:28  
18 sort of nice to see how it goes. 09:23:30  
19 Q. And what did you find interesting about the 09:23:32  
20 deposition of Adam Jaffe? 09:23:34  
21 A. The whole thing was interesting, actually. The 09:23:40  
22 whole process was interesting. 09:23:42  
23 Q. And after you reviewed the deposition, did you talk 09:23:44  
24 to your lawyers about the process? 09:23:46  
25 MS. WALBURN: And that would call for a 09:23:48

19

1 yes or no answer. 09:23:50  
2 MS. JOHNSON: Are you directing the 09:23:52  
3 witness to answer yes or no? 09:23:54  
4 MS. WALBURN: Yes, I am. 09:23:56  
5 THE WITNESS: Yes. 09:23:56  
6 BY MS. JOHNSON:  
7 Q. Have you had a chance to take a look at the expert 09:24:02  
8 reports of the defense experts that were provided to 09:24:04  
9 you, the ones we just went over? 09:24:06  
10 A. You know, I did look at them briefly. I just ran 09:24:10  
11 out of time to -- I didn't study them. I did look 09:24:14  
12 at all three of them briefly. 09:24:16

13 Q. So now Defense Exhibits 2505, 06, 07, 08, 09, and 09:24:26  
14 the additional items we reviewed that were in 09:24:30  
15 Mr. Wilson's letter, looking at all those materials 09:24:34  
16 together, do I now have, to the best of your 09:24:38  
17 knowledge, all of the notes, handwritings, 09:24:40  
18 calculations and other documents that you prepared 09:24:42  
19 for this litigation? 09:24:44  
20 MS. WALBURN: Two things. One is I have 09:24:46  
21 two more documents to turn over to you. And the 09:24:48  
22 second is I think that's an unfair question because 09:24:52  
23 obviously this has been a brief process of looking 09:24:54  
24 at things. 09:24:54  
25 First let me turn over two additional 09:24:56

20

1 documents that have been generated by Professor 09:25:04  
2 Perry. The first is a seven-page document titled, 09:25:10  
3 "Outline with tobacco industry documentation." And 09:25:18  
4 the second is one page of handwritten notes which 09:25:22  
5 starts with the number 1 and the words "not 09:25:28  
6 advertise." 09:25:28  
7 MR. JOHNSON: Just for the record, let's 09:25:40  
8 go ahead and mark the first seven-page document that 09:25:42  
9 you're handing to me today for the first time as 09:25:46  
10 2510, and the other handwritten item is 2511. 09:25:54  
11 (Defendants' Exhibits 2510 and 2511 marked 09:26:38  
12 for identification by the reporter.)  
13 BY MS. JOHNSON:  
14 Q. Dr. Perry, I'm going to hand you Defense Exhibit 09:26:42

15 2510. Is that your handwriting in the margin and at 09:26:48  
16 the bottom of the pages? 09:26:50  
17 A. Yes. 09:26:58  
18 Q. And this looks to me to be very similar to prior 09:27:00  
19 outlines that you prepared? 09:27:02  
20 A. Yeah. 09:27:02  
21 Q. And this is an on-going process, you're adding new 09:27:06  
22 documents to the different sections, is that what 09:27:10  
23 you're doing here with the additions? 09:27:12  
24 A. Yes, that's what I'm doing in marking some just with 09:27:18  
25 the company name. 09:27:18

21

1 Q. And then some cases you identified additional 09:27:26  
2 documents that support -- 09:27:28  
3 A. Yeah, those are the same -- those are not new 09:27:30  
4 documents, those are just documents that I neglected 09:27:32  
5 to cross-reference in my outline. So as I was 09:27:38  
6 reviewing documents, I thought, oh, I better put 09:27:40  
7 that part in my outline. 09:27:42  
8 MS. WALBURN: You should know that both 09:27:42  
9 Exhibits 2510 and 2511 are very recently created. 09:27:48  
10 BY MS. JOHNSON:  
11 Q. Dr. Perry, when did you make these marks on this 09:27:52  
12 document, do you recall? 09:27:52  
13 A. Yes, Sunday. 09:27:54  
14 Q. Sunday, just this past Sunday? 09:27:56  
15 A. Yes. 09:27:56  
16 Q. And this document was created since? 09:27:58  
17 A. Oh, I think that was Monday or Tuesday. 09:28:00

18 Q. Of this week? 09:28:02  
19 A. Of this week, yeah. 09:28:02  
20 Q. And the documents that you have added to a section 09:28:08  
21 which are, I understand, being cross-referenced in 09:28:12  
22 from documents you've already reviewed, these are 09:28:14  
23 not new documents, you just got a new program? 09:28:18  
24 A. Yes.  
25 Q. And the documents on this sheet, are these new 09:28:20

22

1 documents? 09:28:20  
2 A. I think there may be -- they're not new documents in 09:28:24  
3 that they're probably in that stack, but they're -- 09:28:28  
4 I'm not sure all those documents I've outlined, but 09:28:30  
5 they're documents that I wanted as a reference if we 09:28:34  
6 talked about any of those issues today, I wanted 09:28:36  
7 them with me. 09:28:38  
8 Q. And how did you select these documents on 2511? 09:28:44  
9 MS. WALBURN: Can the witness have a copy 09:28:48  
10 of the exhibit? 09:28:52  
11 MS. JOHNSON: Yes.  
12 MS. WALBURN: Thanks.  
13 THE WITNESS: I was thinking of some 09:28:56  
14 points and looking through my notes. And then if I 09:29:06  
15 felt a document supported that point, it might not 09:29:08  
16 be the only document, but it was a document, then I 09:29:12  
17 put it on the list. 09:29:14  
18 And in a couple of cases, they weren't on 09:29:18  
19 my -- this lengthy list of notes, but were documents 09:29:24

20       that I had. So I put those in, as well, just in       09:29:30  
21       case I was asked, well, what document do you mean by       09:29:32  
22       that, then I would have -- so it was really, I felt,       09:29:36  
23       I didn't want this from memory, so that's how I did       09:29:42  
24       that.       09:29:42

25 BY MS. JOHNSON:

23

1 Q. And when you say these were documents that you had,       09:29:46  
2       are you saying that you physically have the full       09:29:48  
3       text copy of these documents in your files in your       09:29:52  
4       home or your office, wherever you work?       09:29:54  
5 A. Yes.       09:29:54  
6 Q. And how long have you had these documents in your       09:29:58  
7       possession?       09:29:58  
8 A. I don't know. Anywhere from, it looks like, January       09:30:04  
9       of 1996. I mean, I don't know exactly. I didn't       09:30:08  
10       date each document. And even the dates on the       09:30:12  
11       directory are approximate because, unfortunately, I       09:30:20  
12       have a full-time job so I couldn't look at them the       09:30:22  
13       day I got them.       09:30:22  
14 Q. When did you last receive documents from the       09:30:28  
15       plaintiffs' firm?       09:30:30  
16 A. I received Paul Much's document this week or last       09:30:42  
17       week. It may have been last week or this week.       09:30:44  
18       Last week I think it was. That was Paul Much's       09:30:50  
19       expert report.       09:30:50  
20 Q. When you say Paul Much's document, you mean his       09:30:56  
21       expert report?       09:30:56  
22 A. Yes.       09:30:56

23 Q. Company documents, do you know what I'm talking 09:31:00  
24 about, tobacco industry company documents? 09:31:02  
25 A. Right. 09:31:04

24

1 Q. When was the last time you received any tobacco 09:31:06  
2 industry company documents from the plaintiffs' 09:31:08  
3 firm? 09:31:10  
4 A. Can I look at my directory? Do you want this 09:31:16  
5 exhibit back? My computer directory. 09:31:18  
6 Q. Okay. Here we go. 09:31:24  
7 A. The one with Macintosh. 09:31:26  
8 Q. 2509. 09:31:28  
9 A. This you can have back if you'd like. 09:32:02  
10 It looks like about the third week of 09:32:04  
11 July, 1997. So that's like last week, week before I 09:32:14  
12 received some documents. I cannot remember which 09:32:16  
13 documents. 09:32:16  
14 Q. Do you receive documents on a regular basis from the 09:32:22  
15 firm, or how does that work? 09:32:24  
16 A. Yeah, I receive documents probably once a month. 09:32:32  
17 Q. And how many documents do you usually receive in a 09:32:34  
18 packet, say, from the firm? 09:32:36  
19 A. That varies. 09:32:36  
20 Q. More than 100 usually or less than 100? 09:32:42  
21 A. I'd say less than 100. I only have a total of, I 09:32:46  
22 don't know, 160 or 170, 170 documents. However, 09:32:54  
23 some of them are very heavy boxes. 09:32:56  
24 Q. But you would guess overall you physically have in 09:33:02

25           your possession about 170 internal tobacco company           09:33:06

25

1           documents?           09:33:06

2                       MS. WALBURN:   Objection to form.           09:33:08

3   BY MS. JOHNSON:

4   Q.   Between now and the time that you testify at trial,           09:33:20

5       do you plan to do any additional research for your           09:33:26

6       testimony?           09:33:26

7   A.   I definitely plan to.           09:33:26

8   Q.   What do you plan to do?           09:33:32

9   A.   I plan to give you any new scientific literature           09:33:34

10       that comes forward.   I plan to read any tobacco           09:33:42

11       industry documents that are presented to me.   I may           09:33:50

12       review government data, should it come forward.           09:33:58

13                       There may be data coming from the Robert           09:34:04

14       Wood Johnson Foundation.   So basically my usual           09:34:10

15       scientific review, which is on-going.           09:34:16

16                       MS. WALBURN:   And I'll point out that           09:34:20

17       Professor Perry indicated some of the work that           09:34:22

18       would be on-going in her expert report in general           09:34:24

19       terms.           09:34:24

20   BY MS. JOHNSON:

21   Q.   Do you plan to review or study the expert reports of           09:34:32

22       the three defense experts that were given to you?           09:34:36

23   A.   I certainly will read them more thoroughly than I           09:34:42

24       have to this date.           09:34:44

25   Q.   Do you plan to conduct any polls or surveys before           09:34:50

1 the time of trial? 09:34:52

2 A. Just pertaining to this case? 09:34:52

3 Q. As part of your testimony. 09:34:54

4 A. No, I don't plan on it. 09:34:56

5 Q. Do you plan to read the depositions of any Medicaid 09:34:58

6 recipients in this litigation? 09:35:02

7 A. No. 09:35:02

8 Q. Now, when you say you plan to read -- 09:35:04

9 A. I should say if I'm asked to read them, I would. 09:35:08

10 But at this point, I'm not planning to. 09:35:10

11 Q. You said that you plan to, of course, review tobacco 09:35:18

12 industry documents that are presented to you. How 09:35:22

13 are tobacco industry documents usually presented to 09:35:26

14 you? 09:35:26

15 A. Well, I'm interested, as you know, in the whole area 09:35:30

16 of youth and smoking, and tobacco industry behavior, 09:35:36

17 practices, statements related to youth, advertising 09:35:40

18 and smoking behavior. 09:35:44

19 So I've asked the lawyers to provide me 09:35:50

20 with documents having to do with that. And since 09:35:56

21 they are basically the clearing house between the 09:36:00

22 repository and me, I can't go to the repository. 09:36:06

23 Then -- I suppose physically I might be 09:36:10

24 able to but -- that's how I plan to do this. I may 09:36:18

25 ask around particular questions that might arise. 09:36:24



1 Q. Do you just call up the firm and say have you found 09:36:28  
2 any more documents, send them on, and then they come 09:36:30  
3 into your house and you summarize them? Or how does 09:36:32  
4 the process work? 09:36:34  
5 A. The process works that we meet. 09:36:36  
6 Q. Who do you meet with when you meet? 09:36:38  
7 A. I meet with Roberta and Gary and Tara Sutton. 09:36:46  
8 Q. Who is Tara Sutton? 09:36:46  
9 A. Also an attorney for Robins, Kaplan, Miller & 09:36:50  
10 Ciresi. And I have met with Mr. Ciresi, as well, as 09:36:56  
11 well as other lawyers here. But the main people 09:37:00  
12 that I talk with are Roberta, Gary and Tara. 09:37:04  
13 Q. Do they then present the documents to you as a 09:37:06  
14 team? 09:37:06  
15 A. They don't present the documents to me. Usually 09:37:14  
16 they say, "we found some documents related to your 09:37:20  
17 area," and then we arrange for me to get them. 09:37:24  
18 Q. You mean, if it's a big box they'll ship it to your 09:37:28  
19 house, or if it's a small amount you'll carry it? 09:37:32  
20 A. I usually don't carry it. I'm a little lazy that 09:37:36  
21 way. 09:37:36  
22 Q. I understand that you have never had your deposition 09:37:38  
23 taken before. But have you ever testified as an 09:37:40  
24 expert? 09:37:40  
25 A. No, never testified. 09:37:42

1 Q. Not at any hearing? 09:37:44  
2 A. No. I've given talks to, like, committees, you 09:37:50  
3 know, but not testified. I haven't testified. 09:37:52

4 Q. And when you gave talks to committees, were you 09:37:56  
5 under oath when you were testifying? 09:37:58  
6 A. No. 09:37:58  
7 Q. Just it was a talk to the committee? 09:38:00  
8 A. Right. 09:38:00  
9 Q. And are those committees that you've spoken to 09:38:02  
10 identified on your C.V. or are these different 09:38:06  
11 committees? 09:38:06  
12 A. I believe they should be identified on my C.V. I 09:38:14  
13 won't swear to that, but you try to make one C.V. as 09:38:18  
14 heavy as possible in my field. 09:38:18  
15 Q. You say you've received your first installment of 09:38:26  
16 documents in, I believe, '96? 09:38:28  
17 A. That's as far as -- I mean, they may have shown up 09:38:32  
18 in December and I didn't do them over Christmas. 09:38:34  
19 But that's my first entry into -- I mean, it's a 09:38:40  
20 good thing the Macintosh has a memory because it's 09:38:44  
21 better than mine. But that looks like about the 09:38:46  
22 time.  
23 Q. Do you recall when you were first contacted to 09:38:52  
24 participate in this case? 09:38:52  
25 A. I believe it was in fall of 1994, I believe. But 09:39:02

29

1 I'm not -- it may have been early '95. It was in 09:39:06  
2 that -- it was after the Surgeon General's Report 09:39:12  
3 was done, I know that. 09:39:12  
4 Q. Do you know how the plaintiffs got your name? 09:39:20  
5 A. I don't know for sure. I think they, you know, 09:39:32

6           talked to people and said, you know, who knows about   09:39:34  
7           smoking in Minnesota. I really don't know,           09:39:40  
8           actually.           09:39:40  
9   Q.   Do you remember who first called you?           09:39:42  
10  A.   Uh-hm, Susan Nelson.           09:39:44  
11  Q.   And who is Susan Nelson?           09:39:46  
12  A.   She's an attorney for Robins, Kaplan, Miller &       09:39:52  
13       Ciresi.           09:39:52  
14  Q.   Did she just call you on the phone or did you       09:39:56  
15       actually have a meeting with Susan?           09:39:56  
16  A.   She called me on the phone, said she was involved in   09:40:00  
17       this lawsuit, and would I like to come over and talk   09:40:04  
18       with them.           09:40:08  
19               This wasn't in regard to my being a --       09:40:12  
20       nothing, just, you know, general exploration of       09:40:12  
21       talking. And I said, "Sure, I'd be glad to share       09:40:14  
22       what I've learned and so forth."           09:40:18  
23  Q.   Before that call, did you know Susan Nelson?       09:40:20  
24  A.   No.           09:40:20  
25  Q.   And so you agreed to come over and talk with the       09:40:22

30

1       lawyers?           09:40:22  
2  A.   Sure. I'm here. I mean, I'm a Minnesotan, it would   09:40:30  
3       be not very nice of me not to come.           09:40:32  
4  Q.   Do you recall when you actually met with the       09:40:34  
5       lawyers?           09:40:34  
6  A.   I don't. It's somewhere in that window, '94, '95,   09:40:42  
7       somewhere there. The lawyers may be able to give       09:40:44  
8       you a better sense of that, but I don't remember       09:40:46

9 exactly. 09:40:46

10 Q. And at that meeting was Susan present? 09:40:50

11 A. Yes, she was. 09:40:52

12 Q. And was there anyone else present? 09:40:52

13 A. I believe so, but I can't remember. I was trying to 09:40:56

14 think of that the other day because we had a series 09:40:58

15 of I met a whole bunch of people. And I can't 09:41:02

16 really remember all the different people. I think 09:41:08

17 someone else was there. 09:41:10

18 Q. When you say you had a series, you mean you had a 09:41:14

19 series of meetings with a bunch of people? 09:41:16

20 A. Yeah. 09:41:16

21 Q. And was Susan part of each one of your meetings? 09:41:20

22 A. She was and at some point she said she was turning 09:41:24

23 me over, and I think she said she was turning me 09:41:26

24 over to Gary to talk with him more. And there was 09:41:30

25 -- and I don't really remember exactly when that 09:41:34

31

1 was. 09:41:34

2 Q. So at that very first meeting after you received 09:41:38

3 your first call from Susan, you came over to the 09:41:42

4 Robins Kaplan firm; is that right? 09:41:44

5 A. Yes. 09:41:46

6 Q. And you met with Susan Nelson and you think some 09:41:48

7 other people who were with the firm? 09:41:48

8 A. Yeah, I think everyone I met with was with the 09:41:52

9 firm. 09:41:52

10 Q. There were no other people present? 09:41:54

11 A. Not that I can recall. I think everyone that I'm 09:41:58  
12 aware was with the firm. 09:42:00  
13 Q. And did you agree at that time to be an expert in 09:42:06  
14 the case? 09:42:06  
15 A. No, it wasn't until later. They didn't ask me, for 09:42:10  
16 one thing. Second, I didn't really know what an 09:42:14  
17 expert was. I really felt they were doing what a 09:42:18  
18 lot of people do, and that is they call me up and 09:42:22  
19 ask me for information on kids and smoking. 09:42:26  
20 So I came over and they asked about kids 09:42:28  
21 and smoking. You know, I do that all the time. So 09:42:34  
22 it really, I mean, it was a little unusual to go to 09:42:38  
23 a law firm for me and meet with lawyers, but -- 09:42:44  
24 Q. Did you make a presentation to them about what you 09:42:46  
25 knew about kids and smoking? 09:42:48

32

1 MS. WALBURN: That would call for a yes or 09:42:50  
2 no answer. 09:42:50  
3 THE WITNESS: No. What do you -- wait, I 09:42:56  
4 think I need what you mean by presentation. Did I 09:42:58  
5 prepare something with slides and over -- 09:43:02  
6 BY MS. JOHNSON:  
7 Q. What did you do? 09:43:04  
8 MS. WALBURN: Counsel, obviously, we're 09:43:06  
9 getting into an area that is protected and we're 09:43:12  
10 going to have to tread very carefully here. 09:43:14  
11 And I would also put you on notice that 09:43:16  
12 any questions which you ask and we agree can be 09:43:18  
13 answered by Professor Perry would also be questions 09:43:20

14           that we would expect answers from defense experts,           09:43:24  
15           as well.           09:43:24  
16 BY MS. JOHNSON:  
17 Q.   How long did your first meeting last?           09:43:28  
18                   MS. WALBURN:   And I would caution           09:43:30  
19           Professor Perry just to the extent we are allowing           09:43:34  
20           you to answer any questions in this area about           09:43:36  
21           meetings with us, to answer the narrow question           09:43:40  
22           that's asked, and sometimes I'll be instructing you           09:43:44  
23           to answer yes or no.           09:43:44  
24                   MR. JOHNSON:   I'm going to object to this           09:43:46  
25           whole coaching of the witness in the middle of the           09:43:50

33

1           deposition.   We've been on the record for about 35           09:43:52  
2           minutes now.   You've had at least a dozen speaking           09:43:54  
3           objections.           09:43:54  
4                   I understand that we can make objections           09:43:56  
5           that are concise, but not coaching the witness, not           09:43:58  
6           instructing the witnesses how to answer questions in           09:44:00  
7           this deposition.           09:44:00  
8                   MS. WALBURN:   Well, your little colloquy           09:44:04  
9           here is entirely out of line.   We're entering into           09:44:06  
10           an area of privilege and it's entirely appropriate           09:44:08  
11           what we're doing.   I would note that you might want           09:44:10  
12           to look at the record of some of your colleagues'           09:44:14  
13           depositions.           09:44:14  
14 BY MS. JOHNSON:  
15 Q.   Now I see why you don't like to meet with lawyers           09:44:20

16 all the time. It's not always pleasant. 09:44:24  
17 At that first meeting, did your attorneys 09:44:26  
18 give you any materials to review? 09:44:28  
19 MS. WALBURN: Again, that would call for a 09:44:30  
20 yes or no answer. 09:44:30  
21 THE WITNESS: No. 09:44:32  
22 BY MS. JOHNSON:  
23 Q. What happened at that first meeting? 09:44:34  
24 MS. WALBURN: Objection; form. 09:44:34  
25 BY MS. JOHNSON:

34

1 Q. You may answer the question. 09:44:36  
2 A. I went home. I went home, back to work, taught 09:44:42  
3 classes. Nothing, really nothing happened after 09:44:46  
4 that first meeting. 09:44:46  
5 Q. Did there come a time after that where someone from 09:44:48  
6 the Robins Kaplan firm called you again? 09:44:52  
7 A. Yeah. 09:44:52  
8 Q. When was that? 09:44:52  
9 A. I don't remember exactly. 09:44:54  
10 Q. Was it the next day? 09:44:56  
11 A. No. No. 09:44:56  
12 Q. A week later? 09:44:58  
13 A. It was a chunk of time. 09:45:00  
14 Q. Maybe a couple weeks? 09:45:02  
15 A. Maybe a month. 09:45:02  
16 Q. Maybe a month? 09:45:04  
17 A. It was a chunk of time. 09:45:06  
18 Q. Who called you that second time after the elapsed 09:45:08

19 time? 09:45:08  
20 A. Susan. 09:45:08  
21 Q. Susan called you again? 09:45:10  
22 A. I believe. 09:45:10  
23 Q. And after Susan called you that second time, what 09:45:20  
24 happened next? 09:45:20  
25 MS. WALBURN: Objection; form. 09:45:20

35

1 THE WITNESS: After Susan called the 09:45:22  
2 second time, she asked me to come to another meeting 09:45:22  
3 to talk with other people, I believe. 09:45:26  
4 I mean, I really have to say on the record 09:45:30  
5 that my memory of all this is not crystal clear. I 09:45:34  
6 didn't take notes. This is -- I meet with lots of 09:45:36  
7 people. 09:45:36  
8 So I remember contacts with Susan. I 09:45:40  
9 remember talking to a set of different people, and 09:45:44  
10 talking with them generally about adolescents and 09:45:48  
11 smoking. 09:45:50  
12 BY MS. JOHNSON:  
13 Q. So you say this was a set of different people. Who 09:45:52  
14 was at this second meeting? 09:45:54  
15 A. Susan and somebody or somebodys. 09:46:02  
16 Q. Was it more than one person in addition to Susan, do 09:46:06  
17 you recall?  
18 A. I honestly don't remember. 09:46:08  
19 Q. Was that person a lawyer? 09:46:08  
20 A. I think these were all lawyers. I mean, but I'm 09:46:14



21 saying I think. I'm assuming everybody who works 09:46:18  
22 here is a lawyer, and that may not be true. I 09:46:20  
23 really don't know. 09:46:22  
24 Q. And at the second meeting, did the lawyers give you 09:46:26  
25 any materials to review? 09:46:28

36

1 A. No. 09:46:28  
2 Q. So this would be early '96, maybe February of '96? 09:46:38  
3 A. No, I think we're now in -- we're in '95. We're in 09:46:50  
4 '95. 09:46:50  
5 Q. So you've had two meetings that occurred in '95, the 09:46:54  
6 initial one with Susan? 09:46:56  
7 A. Another one. 09:46:56  
8 Q. Time passed, Susan called again, again in '95? 09:47:00  
9 A. Right. 09:47:00  
10 Q. So we're still in '95? 09:47:02  
11 A. Right. 09:47:02  
12 Q. Okay. After this second meeting in '95 with this 09:47:06  
13 different set of lawyers, did you agree to be an 09:47:08  
14 expert witness in the case at that time? 09:47:10  
15 A. No. 09:47:10  
16 Q. What happened next? 09:47:12  
17 MS. WALBURN: Objection; form. I would 09:47:16  
18 suggest that if you ask more specific questions, we 09:47:20  
19 could move this along. 09:47:20  
20 MS. JOHNSON: I would suggest the witness 09:47:22  
21 can answer the question. 09:47:22  
22 MS. WALBURN: What happened next? That's 09:47:24  
23 a question?

24 MR. JOHNSON: She's been able to answer it 09:47:26  
25 the last two times I've asked it. 09:47:28

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1 THE WITNESS: The same thing. I went 09:47:30  
2 home, went back to work. It was some chunk of time 09:47:34  
3 before, again another large chunk of time, before I 09:47:38  
4 was called again. 09:47:38  
5 BY MS. JOHNSON:  
6 Q. And when were you called again? 09:47:40  
7 A. Month, two months. It was -- these were 09:47:46  
8 considerable time spans. 09:47:48  
9 Q. And was it Susan who called you again the third time 09:47:52  
10 or someone else? 09:47:52  
11 A. I think it was still Susan at that point. 09:47:56  
12 Q. And this is probably still '95? 09:47:58  
13 A. Yes, '95. 09:48:00  
14 Q. And when Susan called the third time, did she say, 09:48:04  
15 "Cheryl, would you come in for a meeting?" 09:48:06  
16 A. Yep. 09:48:06  
17 Q. And did you come in for a meeting? 09:48:08  
18 A. Yep. 09:48:08  
19 Q. Who was present at that third meeting? 09:48:10  
20 A. Susan and other people, and, you know, I don't 09:48:18  
21 actually remember the exact meeting when I first was 09:48:22  
22 introduced to Gary and Roberta. I don't remember 09:48:28  
23 that. 09:48:30  
24 It was somewhere, though, towards late 09:48:32  
25 summer of 1995, I think. And I'm going to keep 09:48:38

1 saying I think because I didn't write any chronology 09:48:42  
2 of this. 09:48:42  
3 Q. Was anyone present at that third meeting other than 09:48:50  
4 lawyers for the Robins Kaplan firm that you know 09:48:52  
5 of? 09:48:52  
6 A. That I know of, no. 09:48:56  
7 Q. And at the third meeting, did the lawyers give you 09:48:58  
8 any materials to review? 09:49:00  
9 A. Not that I remember. 09:49:02  
10 Q. Did you think it was odd that they would call you 09:49:06  
11 every few months just to meet? 09:49:08  
12 MS. WALBURN: Objection; form. 09:49:10  
13 THE WITNESS: I understood that they were 09:49:12  
14 working on this lawsuit. I understood they wanted 09:49:16  
15 to talk about adolescents and smoking. I understood 09:49:20  
16 that I was an expert in this subject. 09:49:22  
17 And in a way they could get free knowledge 09:49:26  
18 from me. I mean, you know, I'm here, I'm local. So 09:49:30  
19 I didn't think it was odd, no. I didn't think it 09:49:34  
20 was odd. 09:49:34  
21 I mean, other agencies want that 09:49:40  
22 knowledge. You know, other people in Minnesota call 09:49:42  
23 much more frequently. I mean, that is part of my 09:49:46  
24 duty as a citizen of Minnesota. 09:49:50  
25 BY MS. JOHNSON:

1 Q. So in the summer of '95 after the third meeting -- 09:49:56  
2 and, by the way, how long would these meetings last, 09:49:58  
3 roughly? 09:50:00  
4 A. I seem to remember that they lasted about an hour 09:50:04  
5 and a half.  
6 Q. After this third meeting, what happened next? 09:50:14  
7 MS. WALBURN: Objection; form. 09:50:16  
8 THE WITNESS: It gets hazy here. At some 09:50:22  
9 point, I don't know, first of all, I don't know the 09:50:24  
10 total number of meetings. 09:50:26  
11 At some point I was asked to be an expert 09:50:30  
12 witness, at some point. And at some -- and that 09:50:38  
13 was, I believe, fall, early fall 1995. But to be 09:50:50  
14 truthful with you, I don't even remember who asked 09:50:54  
15 me to be an expert witness. 09:50:54  
16 BY MS. JOHNSON:  
17 Q. Do you remember what your answer was? 09:50:56  
18 A. Yeah, I said yes. 09:50:58  
19 Q. Did they say specifically what they wanted you to be 09:51:04  
20 an expert in? 09:51:06  
21 A. Yeah. 09:51:06  
22 Q. And what was that? 09:51:08  
23 A. Adolescents, youth smoking, the influences of the 09:51:14  
24 tobacco companies. I think they really wanted me to 09:51:22  
25 expand on what I had been studying with the Surgeon 09:51:26

1 General's Report, et cetera. 09:51:32

2 Q. And you think this is sometime in the fall of '95? 09:51:36

3 A. Yeah, I think that's about right. 09:51:38

4 Q. And when you agreed to be an expert witness, is that 09:51:40

5 when the lawyers started giving you materials to 09:51:44

6 review? 09:51:44

7 A. When I became an expert witness, I think it was 09:51:52

8 after that. It may have been before it, but then I 09:51:56

9 actually got the court -- the actual, I don't know 09:52:00

10 what you call it, when you file. 09:52:02

11 Q. The Complaint? 09:52:04

12 A. The Complaint. So I believe it was right after, 09:52:12

13 right after that that I got that. But I didn't 09:52:18

14 receive tobacco industry documents for some time 09:52:20

15 thereafter. 09:52:20

16 Q. About how long after you agreed to be an expert 09:52:30

17 witness did you begin to receive the tobacco 09:52:32

18 industry documents from the lawyers? 09:52:34

19 A. Well, as I said before, I think the first documents 09:52:36

20 I received were in early 1996, according to 09:52:42

21 Macintosh. And it could have been, as I said, late 09:52:48

22 1995. 09:52:50

23 Again, I'll just say my memory's pretty -- 09:52:54

24 not very exact on this. 09:52:56

25 Q. But some time passed and then you got -- 09:52:58

1 A. Yes. Yes. 09:53:00

2 Q. Do you recall the volume of documents that you first 09:53:06

3 received? 09:53:06

4 A. No, I don't, actually. I remember it was enough I 09:53:14

5           could carry home, but I didn't. I mean, I didn't. 09:53:20  
6           It was maybe four inches of documents. I mean, you 09:53:26  
7           probably want to know the number, but it was like 09:53:28  
8           four inches. I said to myself, "Could I carry this 09:53:32  
9           home?" And I decided not to because I didn't want 09:53:36  
10          to carry it and it hurt my shoulders and so forth. 09:53:38  
11 Q.       Now, were these documents that you had made a 09:53:42  
12          request for? 09:53:42  
13                   MS. WALBURN: Objection; asked and 09:53:44  
14          answered. 09:53:46  
15                   THE WITNESS: These were in the area that 09:53:48  
16          I had said I would like to look at. 09:53:50  
17 BY MS. JOHNSON:  
18 Q.       And when did you make that request for the 09:53:52  
19          documents? 09:53:52  
20 A.       When we started -- after I became an expert witness, 09:53:58  
21          we began meeting, and I said I want to look at these 09:54:02  
22          documents. 09:54:02  
23 Q.       How did you know that the documents existed? When 09:54:06  
24          you say you had meetings and you said "I want to 09:54:08  
25          look at these documents," how did you know that 09:54:10

1           there were such documents to be had? 09:54:12  
2 A.       Because they were in the newspaper that they were 09:54:16  
3          being delivered to a warehouse in north 09:54:20  
4          Minneapolis. And of course I wanted -- I mean, as a 09:54:28  
5          scientist I want to look at any documents related to 09:54:30  
6          youth and smoking. 09:54:32

7 Q. And when you say they were being delivered to a 09:54:36  
8 warehouse, that suggests to me that there must be 09:54:38  
9 more than four inches of documents; is that right? 09:54:40  
10 A. At this point, I'm quite sure there's more than four 09:54:44  
11 inches of documents. 09:54:44  
12 Q. Do you have any idea what the volume of documents 09:54:46  
13 are that -- 09:54:48  
14 A. I've heard various reports. Something, you know, 09:54:54  
15 like 30 million documents. But I'm not sure if that 09:54:56  
16 means 30 million documents or 30 million pages or 30 09:55:00  
17 million notes or -- I don't know how you count 09:55:02  
18 things. 09:55:02  
19 Q. Just 30 million? 09:55:04  
20 A. 30 million is a number that recurs. 09:55:08  
21 Q. How many times would you say that you've met with 09:55:20  
22 the lawyers since you started meeting with Susan in 09:55:24  
23 '95? Just a ballpark. I know you haven't kept a 09:55:32  
24 tally. 09:55:34  
25 A. Up until today? 09:55:42

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1 Q. Up until today. More than five? 09:55:48  
2 A. Yeah, I'd say 15 to 20 times. It seems like once a 09:55:56  
3 month and some months we skipped. 09:56:00  
4 Q. Do you recall at any of these 15 to 20 meetings 09:56:16  
5 whether there were any other experts present at the 09:56:20  
6 meetings with you? 09:56:22  
7 A. There were no other experts present at the meeting 09:56:28  
8 that I know of. 09:56:28  
9 Q. And to your knowledge, everyone who was present was 09:56:32

10 a lawyer? 09:56:32

11 A. To my knowledge, they were all lawyers. 09:56:34

12 Q. When was the first time that you reviewed an 09:56:42

13 internal tobacco industry document? 09:56:44

14 MS. WALBURN: Objection; asked and 09:56:46

15 answered. 09:56:46

16 THE WITNESS: I think if I could look at 09:56:50

17 my index, that will give us I think a -- because 09:56:56

18 when I began reviewing, I immediately took notes. 09:57:02

19 That's my thing. 09:57:32

20 It looks like December 30, 1996. That may 09:57:46

21 not be exact if I edited it, but for the most part I 09:57:52

22 didn't edit it, so that's probably a pretty good 09:57:54

23 estimate.

24 BY MS. JOHNSON:

25 Q. So maybe a week before may have been the first time 09:57:58

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1 you reviewed tobacco industry documents and maybe 09:58:00

2 you didn't enter it on your computer? 09:58:02

3 A. I entered it as I read. No, I meant that some of 09:58:04

4 the documents I went back to and added on things to, 09:58:08

5 I may have, which then this means last modified. 09:58:12

6 But that's only a handful that that occurred. 09:58:16

7 So I think that's a pretty good date, 09:58:18

8 December 30, 1996. And at least it wasn't December 09:58:22

9 31, so I had other things to do on New Year's Eve. 09:58:26

10 Q. Have you discussed this case with anyone? 09:58:34

11 A. No. 09:58:34



12	Q.	Not your husband?	09:58:36
13	A.	No.	09:58:36
14	Q.	Not your friends?	09:58:38
15	A.	My husband knows I'm involved in the case,	09:58:44
16		obviously, and my colleagues and friends know I'm	09:58:48
17		involved in the case, you know. The extent that	09:58:50
18		they know is that I'm an expert witness, and that's	09:58:54
19		it. I was given very strict instructions not to	09:58:58
20		talk about the case.	09:58:58
21	Q.	Who gave you those strict instructions not to talk	09:59:06
22		about the case?	09:59:06
23	A.	The lawyers, all of them.	09:59:08
24	Q.	So you've never talked to any of your students about	09:59:10
25		what you're doing for the litigation?	09:59:10

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1	A.	I've told them that I'm involved in the case, that I	09:59:14
2		may be a witness for the case, and that's what I've	09:59:18
3		said to them.	09:59:20
4	Q.	And what has been their general reaction?	09:59:22
5	A.	Well, kind of -- their reaction has been great and	09:59:34
6		it must be scary, from their point, they're public	09:59:38
7		health students, so from their point of view it's a	09:59:40
8		big, pretty big thing.	09:59:42
9	Q.	What part do you they think is scary about it?	09:59:46
10	A.	Having to testify, not to mention the deposition.	09:59:48
11	Q.	Now, I understand that you have the expert reports	09:59:58
12		of the other experts in this case who are testifying	10:00:04
13		for the plaintiffs, right?	10:00:04
14	A.	Yes.	10:00:06

15 Q. Do you personally know any of these people? 10:00:08  
16 A. Yes, I do. 10:00:10  
17 Q. Who do you personally know? 10:00:10  
18 A. Can I look at -- 10:00:12  
19 Q. Certainly. 10:00:14  
20 A. -- the document. I know Richard Hurt because he's 10:00:20  
21 from here, Minnesota. I know Jonathan Samet. 10:00:32  
22 That's it. 10:00:32  
23 Q. And is the document you're referring to the listing 10:00:38  
24 of all the plaintiffs' expert reports, and that's 10:00:40  
25 just the cover sheet that lists the individuals? 10:00:42

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1 A. Uh-hm. 10:00:44  
2 Q. You don't know Barbara Bowers or Scott Davies? 10:00:48  
3 A. No, I don't. 10:00:50  
4 Q. Robert Dolan, never heard of him? 10:00:52  
5 A. I've heard of him, but I don't know him. 10:00:54  
6 Q. Kevin Graham? 10:00:56  
7 A. No, I don't know him. 10:00:58  
8 Q. Adam Jaffe? 10:01:00  
9 A. Again, I've heard of him but I don't know him. 10:01:02  
10 Q. Leonard Miller? 10:01:04  
11 A. No, I don't know him. 10:01:04  
12 Q. Timothy Wyant? 10:01:08  
13 A. No, I don't know him. 10:01:10  
14 Q. Scott Zeger? 10:01:14  
15 A. No, I don't know him. 10:01:16  
16 Q. Paul Much? 10:01:16

17 A. Don't know him. 10:01:18  
18 Q. Channing Robertson? 10:01:22  
19 A. Don't know. 10:01:24  
20 Q. Timothy Wyant? He's on here twice. 10:01:28  
21 A. No.  
22 Q. Richard Hurt, how do you know him? 10:01:30  
23 A. I've been at meetings with him before. 10:01:34  
24 Q. What kinds of meetings have you been with him? 10:01:36  
25 A. On addiction around nicotine and adolescents. 10:01:44

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1 Q. Would these be meetings at the law firm? 10:01:46  
2 A. No, not with the law firm. This was the latest 10:01:50  
3 meeting. I met him a while back, and I can't 10:01:54  
4 remember exactly when because he's in the same field 10:01:56  
5 I'm in so we might have bumped into each other at 10:02:00  
6 other meetings, but there was a meeting on teenage 10:02:02  
7 addiction run by a consulting firm from Washington, 10:02:10  
8 D.C.  
9 Q. Is that Tobacco Free Kids? 10:02:12  
10 A. No. 10:02:12  
11 Q. Someone else? 10:02:14  
12 A. Someone else. Having to do with pharmaceuticals, I 10:02:18  
13 believe, and he was at that meeting. 10:02:22  
14 Q. At that meeting, did anyone discuss this 10:02:24  
15 litigation? 10:02:24  
16 A. No. 10:02:26  
17 Q. Never came up? 10:02:26  
18 A. I may have said I was an expert witness, but I'm not 10:02:36  
19 sure. That would have been the extent of it. You 10:02:38

20 know, I don't know. 10:02:40  
21 Q. Did you know when you attended the meeting that he 10:02:44  
22 was going to be an expert witness, too? 10:02:46  
23 A. I believe I did. Yeah, I believe I did. 10:02:48  
24 Q. And you don't recall -- do you recall how you knew 10:02:52  
25 that he was an expert in the case? 10:02:54

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1 A. Yeah, the lawyers told me. I asked. I wanted to 10:03:00  
2 know who the other expert witnesses were on both 10:03:02  
3 sides, and they said they couldn't tell me on your 10:03:04  
4 side. 10:03:06  
5 Q. Now, you say that you and Richard Hurt are in the 10:03:10  
6 same field, I see he's an M.D. in nicotine 10:03:12  
7 addiction? 10:03:12  
8 A. Uh-hm. 10:03:14  
9 Q. What field are you referring to? 10:03:14  
10 A. The field of tobacco use among adolescents. He also 10:03:20  
11 has worked with adolescents who are trying to quit 10:03:22  
12 smoking. 10:03:24  
13 Q. And Jonathan Samet, who is he? 10:03:32  
14 A. He's an epidemiologist at Johns Hopkins University. 10:03:40  
15 Q. How do you know him? 10:03:40  
16 A. He wrote a section in the Surgeon General's Report 10:03:44  
17 involving that. He also applied for dean of our 10:03:48  
18 school of public health, and so I interviewed -- I 10:03:52  
19 don't know if I interviewed him, I was there, 10:03:54  
20 attended, I met him. 10:03:56  
21 That may have been the first time I met 10:03:58

22 him when he applied here. 10:04:02  
23 Q. Was that before he wrote a section in the Surgeon 10:04:04  
24 General's Report? 10:04:04  
25 A. Yeah, I think that was before. 10:04:06

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1 Q. So at the time you were the senior scientific editor 10:04:10  
2 of the '94 report; is that right? 10:04:12  
3 A. That's right. 10:04:12  
4 Q. So at the time you were the editor, you already knew 10:04:14  
5 him from the brief contact you had when he applied? 10:04:16  
6 A. Yeah, I knew he was a very good epidemiologist. 10:04:20  
7 Q. And do you think that Richard Hurt is a very good 10:04:22  
8 expert in nicotine addiction? 10:04:24  
9 A. The best. 10:04:26  
10 Q. Do you know whether the lawyers have given your 10:04:36  
11 expert report to any of the other experts to 10:04:38  
12 review? 10:04:38  
13 A. I don't know that for certain. 10:04:40  
14 Q. What do you think? 10:04:42  
15 MS. WALBURN: I'm not going to have 10:04:42  
16 speculation going on here on the record. 10:04:44  
17 MR. JOHNSON: I asked her what she thinks. 10:04:48  
18 MS. WALBURN: That calls for speculation. 10:04:50  
19 She's already answered the question. 10:04:52  
20 BY MS. JOHNSON:  
21 Q. Do you think that your lawyers have given your 10:04:58  
22 expert report to anyone else on your team to 10:05:02  
23 review? 10:05:02  
24 MS. WALBURN: Same objection. 10:05:02

1 Q. You may answer the question. She can object and you 10:05:04  
2 can answer. 10:05:04  
3 A. I assume they have. 10:05:04  
4 Q. Okay. Have you received comments back from the 10:05:06  
5 lawyers about your expert report? 10:05:08  
6 MS. WALBURN: That calls for a yes or no. 10:05:10  
7 THE WITNESS: Yes. 10:05:12  
8 BY MS. JOHNSON:  
9 Q. And have you received comments from any of the other 10:05:14  
10 experts about your report? 10:05:16  
11 A. No. 10:05:16  
12 Q. And when you received comments from your lawyers 10:05:20  
13 about your report, what did you do? 10:05:22  
14 MS. WALBURN: Objection. And I'm not 10:05:26  
15 going to allow the question to be answered in the 10:05:30  
16 vague state that it has been asked, given that it is 10:05:34  
17 encroaching on privileged communications. 10:05:38  
18 BY MS. JOHNSON:  
19 Q. Did your lawyers have comments or changes to your 10:05:42  
20 expert report? 10:05:42  
21 MS. WALBURN: That calls for a yes or no 10:05:44  
22 response. 10:05:48  
23 THE WITNESS: Yes, the lawyers had 10:05:50  
24 comments -- 10:05:54  
25 MS. WALBURN: I'm going to instruct the 10:05:56

1 witness not to answer further. 10:05:56

2 BY MS. JOHNSON:

3 Q. And did you revise your report as a result of 10:05:58

4 receiving comments from the lawyers? 10:06:00

5 A. Yes, I revised the report. 10:06:04

6 Q. Okay. 10:06:04

7 A. But I didn't revise any of the content. 10:06:16

8 Q. I don't understand what you're saying. 10:06:20

9 MS. WALBURN: She's answered the question, 10:06:22

10 and there is no -- 10:06:24

11 MR. JOHNSON: I'm going to object to this 10:06:26

12 constant interruption, Roberta. I didn't hear what 10:06:28

13 she said. She's speaking in a very soft voice. I 10:06:32

14 could not hear what she was saying. I've asked her 10:06:32

15 to answer in a little bit louder voice so I can 10:06:36

16 hear. 10:06:36

17 MS. WALBURN: Well, I'm going to object to 10:06:36

18 your mischaracterization of the record. And to the 10:06:38

19 extent you can't hear the answer, I would ask the 10:06:40

20 court reporter to read it back. 10:06:42

21 BY MS. JOHNSON:

22 Q. When Susan Nelson called you in 1995, was that the 10:06:50

23 first time anyone had ever approached you to 10:06:52

24 participate in tobacco litigation? 10:06:56

25 A. I can't remember if it was '95 or '94, so I'll 10:07:04

1 clarify that part. And, yes, that was the first 10:07:08  
2 time anyone had ever -- well, let me back up on 10:07:14  
3 that, sorry. 10:07:16  
4 I was involved in writing an affidavit, 10:07:18  
5 which was part of -- I think was part of a 10:07:22  
6 litigation. 10:07:22  
7 Q. And do you recall what litigation that affidavit was 10:07:26  
8 prepared for? 10:07:26  
9 A. It had to do with an advertisement at Shea Stadium 10:07:36  
10 in New York City, and I was asked for my opinion as 10:07:40  
11 to about that. 10:07:40  
12 Q. And who asked you for your opinion about that? 10:07:44  
13 A. Some lawyers in New York. 10:07:46  
14 Q. You don't recall the firm? 10:07:48  
15 A. No, I don't, actually. 10:07:50  
16 Q. Do you recall what your opinion was about the 10:07:52  
17 signage at the Shea Stadium? 10:07:54  
18 A. Yes, I thought the signage shouldn't be there. 10:07:56  
19 Q. This was an affidavit that you -- 10:07:58  
20 A. I prepared. 10:07:58  
21 Q. And did you ever follow-up and have to testify about 10:08:04  
22 it? 10:08:04  
23 A. No. 10:08:04  
24 MS. WALBURN: When you're done, Counsel, 10:08:12  
25 with the line of questions on Shea Stadium, and 10:08:16

1 maybe you are now, we'd like to take a quick break. 10:08:18  
2 MR. JOHNSON: I'd just like to note for 10:08:20



3 the record that we were not informed that this 10:08:22  
4 witness had made an appearance in any other 10:08:24  
5 litigation. 10:08:24  
6 MS. WALBURN: I'll note for the record 10:08:26  
7 that you're not entitled to that information. 10:08:28  
8 MR. JOHNSON: I'll note for the record 10:08:30  
9 that we are. 10:08:30  
10 MS. WALBURN: You're mistaken. 10:08:30  
11 MR. JOHNSON: We'll see. Let's take a 10:08:32  
12 break. 10:08:34  
13 (Off the record.) 10:10:44  
14 MS. JOHNSON: Back on the record. 10:16:00  
15 MS. WALBURN: 10:16. 10:16:04  
16 BY MS. JOHNSON:  
17 Q. Dr. Perry, do you have a copy of the affidavit that 10:16:08  
18 you submitted in the Shea Stadium matter? 10:16:12  
19 A. I don't believe so. 10:16:14  
20 Q. Are you being compensated for your time in this 10:16:26  
21 case? 10:16:26  
22 MS. WALBURN: That calls for a yes or no 10:16:28  
23 answer. 10:16:28  
24 THE WITNESS: Yes. 10:16:30  
25 BY MS. JOHNSON:

1 Q. And what is your hourly rate? 10:16:34  
2 MS. WALBURN: I'm going to at this point 10:16:36  
3 instruct the witness not to answer. This issue came 10:16:38  
4 up in the Jaffe deposition. At that time we stated 10:16:42  
5 and agreed with Mr. Munger that if we could reach a 10:16:44

6           bilateral agreement with defendants on compensation,   10:16:46  
7           we would agree to that.                                   10:16:48  
8                       If we do, you'll be entitled to that       10:16:52  
9           information. Otherwise, you won't be.                   10:16:52  
10                      MR. PERRY WILSON: I don't know. We'll       10:16:58  
11           find out at noon.                                       10:17:00  
12                      MS. JOHNSON: We'll move on to something   10:17:02  
13           else.   10:17:04  
14 BY MS. JOHNSON:  
15 Q.    Dr. Perry, your C.V. begins in 1967. When were you   10:17:08  
16        born?   10:17:08  
17 A.    1950.   10:17:10  
18 Q.    And where were you born?                               10:17:12  
19 A.    Lakewood, Ohio.   10:17:14  
20 Q.    Did you go to school in Lakewood, Ohio?               10:17:18  
21 A.    No, I didn't.   10:17:20  
22 Q.    Where did you go to school?                             10:17:20  
23 A.    In Los Angeles.   10:17:22  
24 Q.    Did you go to elementary school in Los Angeles?       10:17:28  
25 A.    Yes, I did.   10:17:28

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1 Q.    Do you recall what elementary school you went to?       10:17:30  
2 A.    No, I can't remember the name of it.                   10:17:34  
3 Q.    Do you recall the county which you resided when you   10:17:36  
4        were in elementary school?                               10:17:38  
5 A.    Yes, Los Angeles.   10:17:38  
6 Q.    Okay. When did your family move from Ohio to           10:17:46  
7        California?   10:17:46

8	A.	1954.	10:17:46
9	Q.	And did you also go to junior high school in Los	10:17:52
10		Angeles?	
11	A.	Yes.	10:17:52
12	Q.	Do you recall the junior high school you attended?	10:17:54
13	A.	Columbus Junior High School.	10:17:56
14	Q.	And what about high school?	10:17:58
15	A.	Los Angeles. That's the city, I mean, or county.	10:18:06
16	Q.	So is that the name of the high school?	10:18:12
17	A.	No, no, the name of the high school is Chartsworth	10:18:18
18		High School.	10:18:18
19	Q.	I presume you took all the required courses	10:18:24
20		throughout elementary school?	10:18:24
21	A.	I'm quite sure I did, yes.	10:18:28
22	Q.	And junior high school, as well?	10:18:32
23	A.	Yes.	10:18:32
24	Q.	And high school?	10:18:34
25	A.	Yes.	10:18:34

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1	Q.	You were probably a very good student?	10:18:36
2	A.	Yes.	10:18:36
3	Q.	While you were in high school, were you a member of	10:18:40
4		any clubs at school?	10:18:42
5	A.	Yeah, I'm sure I was in some clubs.	10:18:52
6	Q.	Do you remember what clubs you were a member of?	10:18:54
7	A.	I was a cheerleader, so there was an actual	10:19:00
8		cheerleading club, and I taught cheerleading to	10:19:04
9		other adolescent girls. I remember that club.	10:19:10
10		I think for a while I was in the drama	10:19:14

11 club. We may have had -- I can't -- I think that's 10:19:20  
12 it. I'm sure there are other clubs, but that's all 10:19:22  
13 I can remember at this point. 10:19:24  
14 Q. While you were in junior high school and high 10:19:28  
15 school, did you ever attend any special assemblies? 10:19:32  
16 A. Not that I can remember. 10:19:38  
17 Q. So you don't think you've ever attended any special 10:19:40  
18 assembly? 10:19:42  
19 MS. WALBURN: Object; form. 10:19:46  
20 THE WITNESS: During junior high and high 10:19:50  
21 school? 10:19:50  
22 BY MS. JOHNSON:  
23 Q. Throughout any of those years. 10:19:52  
24 A. There must have been some, but I don't remember 10:19:54  
25 them. 10:19:54

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1 Q. But if there were some, you probably attended them? 10:19:58  
2 MS. WALBURN: Objection; calls for 10:19:58  
3 speculation. 10:20:00  
4 THE WITNESS: I don't remember attending 10:20:02  
5 any assemblies. 10:20:04  
6 BY MS. JOHNSON:  
7 Q. So even as a cheerleader and a member of the drama 10:20:08  
8 club throughout your years in junior high school and 10:20:14  
9 high school, you don't recall a single assembly? 10:20:16  
10 A. I don't recall any assemblies. I don't recall, 10:20:24  
11 like, what I think of as an assembly where everybody 10:20:28  
12 gets together and is given a topic or speech or, no, 10:20:32

13 I don't remember anything like that when I was in 10:20:34  
14 junior high or high school. 10:20:36  
15 Though, they may have existed. They 10:20:38  
16 weren't really what I was thinking about. I don't 10:20:44  
17 remember.  
18 Q. When you were a high school student, did you ever 10:20:50  
19 read the newspaper? 10:20:52  
20 A. I'm sure I did, but not much. 10:21:02  
21 Q. Did your family subscribe to a newspaper or did they 10:21:06  
22 read it occasionally? 10:21:08  
23 A. My family subscribed to the newspaper. 10:21:10  
24 Q. Do you recall what newspaper? 10:21:10  
25 A. "Los Angeles Times." 10:21:12

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1 Q. Is that the only one they subscribed to? 10:21:14  
2 A. That I remember. 10:21:16  
3 Q. Did they subscribe to any other news publications? 10:21:18  
4 A. I can't remember. I remember, like, "Life" 10:21:26  
5 magazine, but I can't remember anything else. They 10:21:30  
6 could have. 10:21:30  
7 Q. So you don't recall having ever seen an issue of 10:21:34  
8 "Reader's Digest" in your home throughout your high 10:21:36  
9 school career? 10:21:38  
10 A. Not during high school. I may have seen "Reader's 10:21:42  
11 Digest" earlier. 10:21:44  
12 Q. And that would be, say, junior high school? 10:21:46  
13 A. Maybe. I'm sure I saw "Reader's Digest" in my home, 10:21:50  
14 though, now that you've prompted me. 10:21:52  
15 Q. Would you have also seen, like, "Time" magazine in 10:22:00

16	your home?	10:22:00
17	A. I don't remember ever seeing "Time" magazine in my	10:22:02
18	home.	10:22:02
19	Q. Do you recall ever seeing "Newsweek" in your home?	10:22:06
20	A. I don't remember seeing "Newsweek" in my home.	10:22:08
21	Q. Did you consider yourself, for a person of your age,	10:22:12
22	to be someone who was up on current affairs?	10:22:16
23	A. In high school and junior high?	10:22:18
24	Q. Yes.	10:22:22
25	A. No, not at all.	10:22:22

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1	Q.	Not at all. Did you ever watch T.V.?	10:22:22
2	A.	I really rarely watched T.V.	10:22:24
3	Q.	Did you ever go to movies?	10:22:26
4	A.	I did go to movies.	10:22:28
5	Q.	Did you ever read novels for pleasure?	10:22:32
6	A.	Not very much, no.	10:22:34
7	Q.	So what did you spend all of your time doing?	10:22:36
8	A.	Well, I went to the beach, I swam. We had a	10:22:40
9		swimming pool. I hung out with friends. But mainly	10:22:48
10		I did homework and practiced my cheerleading	10:22:50
11		routines.	10:22:50
12	Q.	You graduated from high school in 1967; is that	10:22:56
13		right?	
14	A.	That's right.	10:22:56
15	Q.	And up until 1967, had you ever smoked a cigarette?	10:23:00
16	A.	No, I didn't.	10:23:02
17	Q.	Had you ever seen anyone smoke a cigarette?	10:23:04

18	A.	Yes.	10:23:04
19	Q.	Who did you see smoke cigarettes?	10:23:06
20	A.	My mother and father.	10:23:08
21	Q.	Anyone else?	10:23:08
22	A.	I'm sure I saw neighbors smoke cigarettes.	10:23:18
23	Q.	Did you have any friends who smoked cigarettes?	10:23:24
24	A.	No, not that I can remember. I may have had friends	10:23:32
25		who tried cigarettes, but I don't in my head	10:23:36

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1		remember anyone smoking cigarettes.	10:23:38
2	Q.	Any brothers who smoke cigarettes?	10:23:38
3	A.	No.	10:23:40
4	Q.	Do you have any brothers?	10:23:40
5	A.	I do.	10:23:40
6	Q.	They've never smoked cigarettes?	10:23:42
7	A.	I can't attest to whether he's ever smoked a	10:23:48
8		cigarette.	10:23:48
9	Q.	While you were growing up in the home, up until --	10:23:50
10	A.	He never smoked a cigarette in front of me.	10:23:52
11	Q.	And do you have any sisters?	10:23:54
12	A.	No, I don't have any sisters.	10:23:56
13	Q.	Do you have any aunts or uncles who smoke	10:24:02
14		cigarettes?	10:24:02
15	A.	I don't have any aunts or uncles.	10:24:08
16	Q.	Did your parents have any rules about smoking	10:24:10
17		cigarettes?	10:24:10
18	A.	No, not that I -- no, not that I --	10:24:18
19	Q.	If you had arrived home in your cheerleading outfit	10:24:22
20		puffing on a cigarette, they wouldn't have said	10:24:24

21 anything to you? 10:24:24  
22 A. Probably not in high school. I don't think they -- 10:24:28  
23 I don't think they would have said much to me. 10:24:30  
24 Q. Is there a time when they would have said much to 10:24:34  
25 you?

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1 A. Junior high they would have said something. 10:24:36  
2 Q. Do you recall if they ever did say anything to you 10:24:38  
3 in junior high? 10:24:38  
4 A. No. 10:24:38  
5 Q. What about before junior high? 10:24:40  
6 A. No. 10:24:42  
7 Q. So sometime in junior high is when they would have 10:24:46  
8 said something to you? 10:24:46  
9 A. I don't believe they said anything to me. But if 10:24:48  
10 they had, that would have been the time they might 10:24:52  
11 have said something to me. 10:24:52  
12 Q. Were you ever curious about why your mother smoked? 10:24:56  
13 A. No, I wasn't curious about why she smoked. 10:25:00  
14 Q. Were you ever curious about why your father smoked? 10:25:04  
15 A. You mean -- well, let me take that back. During 10:25:08  
16 junior high and high school, I wasn't curious about 10:25:10  
17 why they smoked. Later in life, of course, I was 10:25:16  
18 more curious about why they smoked, when I began 10:25:18  
19 studying smoking. 10:25:24  
20 Q. Were students in your high school allowed to smoke 10:25:26  
21 openly in the high school? 10:25:26  
22 A. I don't think so, but I don't know for sure. I 10:25:36



23 don't remember seeing students smoking. 10:25:36  
24 Q. Was there a smoking lounge in your high school? 10:25:40  
25 A. Not that I can remember. 10:25:42

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1 Q. As a cheerleader, you were probably -- did you cheer 10:25:50  
2 for all sports or just limited sports? 10:25:52  
3 A. Just limited sports. 10:25:54  
4 Q. Did you cheer for football? 10:25:54  
5 A. Yes, I did. 10:25:56  
6 Q. Did you cheer for basketball? 10:25:58  
7 A. I don't think so, but I may have. I only cheered in 10:26:06  
8 fall, not spring. Football was kind of my big thing 10:26:14  
9 for cheering. 10:26:14  
10 Q. So you remember first-and-ten-do-it-again? 10:26:20  
11 A. I do remember that, but I will not exhibit that, 10:26:24  
12 actually. 10:26:24  
13 Q. Do you recall whether there was a rule about whether 10:26:30  
14 the football players that you cheered for could 10:26:34  
15 smoke cigarettes? 10:26:36  
16 A. I don't remember. 10:26:36  
17 Q. Have you ever heard the phrase "coffin nails" 10:26:40  
18 referred to to describe cigarettes? 10:26:42  
19 A. I have heard that, but I didn't hear that when I was 10:26:46  
20 in high school. 10:26:48  
21 Q. What about "cancer sticks"? 10:26:50  
22 A. I didn't hear that when I was in high school or 10:26:52  
23 junior high. 10:26:54  
24 Q. Have you ever heard smokers referred to as having 10:27:00  
25 "Nicotine fits"? 10:27:02

1 A. Not as a teenager I never heard that. 10:27:06

2 Q. Okay. The first Surgeon General's Report on Smoking 10:27:08

3 and Health came out in 1964; isn't that right? 10:27:10

4 A. That's right. 10:27:10

5 Q. And that was two years before you graduated from 10:27:14

6 high school? 10:27:14

7 A. I think that was three years. 10:27:16

8 Q. Okay. So three years before you graduated from high 10:27:18

9 school. So the Surgeon General's Report came out 10:27:20

10 when you were a sophomore in high school? 10:27:24

11 A. I forget what month that was, but somewhere in 9th 10:27:30

12 or 10th grade. 10:27:30

13 Q. And your family subscribed to the "L.A. Times" at 10:27:34

14 that time; isn't that right? 10:27:34

15 A. Right. 10:27:36

16 Q. At the time that you graduated from high school, did 10:27:42

17 you think that cigarette smoking was good for your 10:27:44

18 health? 10:27:44

19 A. I don't remember thinking about it at all in high 10:27:54

20 school in terms of health. 10:27:56

21 Q. How many children are in your family? 10:27:58

22 A. Two. 10:27:58

23 Q. So you have one brother? 10:28:00

24 A. One brother. 10:28:00

25 Q. And so there's just the two of you and your 10:28:02

1 parents? 10:28:04

2 A. Right. 10:28:04

3 Q. So when the Surgeon General's Report comes out in 10:28:10

4 1964 and says, "smoking causes lung cancer," and 10:28:12

5 both of your parents smoke, it didn't occur to you 10:28:14

6 at all, in that small family, to be concerned about 10:28:14

7 the health of your parents? 10:28:16

8 MS. WALBURN: Objection; form. 10:28:16

9 THE WITNESS: After the Surgeon General's 10:28:20

10 Report came out, first of all, even though my 10:28:24

11 parents had all that, I didn't read all of that. I 10:28:28

12 was in my own cloud. 10:28:30

13 My father quit smoking, but he didn't talk 10:28:34

14 about why he was quitting. The Surgeon General's 10:28:36

15 Report came out, he was going to quit smoking. I 10:28:38

16 actually didn't give it much thought. I thought, 10:28:40

17 oh, that's good you're quitting smoking, but it 10:28:42

18 wasn't because of the health. I didn't really 10:28:46

19 think -- I mean, I really was -- this is as best as 10:28:52

20 I can remember. 10:28:52

21 BY MS. JOHNSON:

22 Q. So when President Kennedy was assassinated while you 10:28:56

23 were in high school, did that reach into your own 10:28:58

24 little cloud? 10:28:58

25 A. President Kennedy was assassinated when I was in 10:29:02

1 junior high school. 10:29:02

2 Q. You recall that, don't you? 10:29:04

3 A. I do recall that because they announced it in my 10:29:06

4 classroom over the PA announcement. 10:29:10

5 Q. And in your classroom over the PA system, do you 10:29:14

6 recall any special programs on health topics at 10:29:20

7 Columbus High School? 10:29:22

8 A. I don't remember any health topics, any health 10:29:30

9 programs at Columbus Junior High School. We had 10:29:34

10 health class at Chatsworth High School. 10:29:38

11 Q. And what was health class at Chatsworth High 10:29:42

12 School? 10:29:42

13 A. It was a half of a semester class. And it was 10:29:48

14 taught by the guy who does driver's training, and he 10:29:52

15 told jokes. I don't remember learning anything 10:29:56

16 about health during that half semester. 10:30:00

17 Q. And you're pretty positive about that? 10:30:04

18 A. That I didn't learn anything about health? I'm 10:30:08

19 pretty positive about that, yes. 10:30:10

20 Q. So he told jokes and he never showed any film 10:30:14

21 strips? 10:30:14

22 A. Sitting here today, I can't remember anything about 10:30:22

23 health class. 10:30:22

24 Q. Except specifically that you learned absolutely 10:30:26

25 nothing about health, that's what you specifically 10:30:28

1 remember? 10:30:28

2 MS. WALBURN: Objection; form. 10:30:30

3 BY MS. JOHNSON:

4 Q. You may answer the question. 10:30:32  
5 A. I remember at the time talking to friends and saying 10:30:36  
6 something on the order of "this guy's a joke." I 10:30:40  
7 mean, I remember we'd make fun of this guy. You 10:30:46  
8 know, "How did he become a teacher?" I mean, I 10:30:48  
9 remember that. 10:30:50  
10 So I wouldn't say with 100 percent 10:30:56  
11 certainty that I didn't learn anything about 10:30:58  
12 health. 10:30:58  
13 Q. I'm sorry, I didn't hear what you said. 10:31:00  
14 A. I said I won't -- 10:31:04  
15 MR. GARY WILSON: Can we have the reporter 10:31:06  
16 read it? 10:31:06  
17 MS. JOHNSON: Let's just move on. 10:31:24  
18 BY MS. JOHNSON:  
19 Q. Two years after the Surgeon General's Report came 10:31:26  
20 out, or actually three years after the Surgeon 10:31:28  
21 General's Report came out, you graduated from high 10:31:30  
22 school in 1967. 10:31:30  
23 And at that time it is your testimony 10:31:32  
24 today that you had not thought about health 10:31:38  
25 consequences of smoking? 10:31:38

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1 MS. WALBURN: Objection; asked and 10:31:40  
2 answered. 10:31:40  
3 THE WITNESS: I hadn't given it much 10:31:46  
4 thought. 10:31:46  
5 BY MS. JOHNSON:  
6 Q. But you had thought about it? 10:31:48

7 A. I can't testify to that under oath. 10:31:52  
8 Q. Are you saying you never thought about it? 10:31:52  
9 A. I'm just saying I can't remember. 10:31:54  
10 Q. Are you saying that you never thought about the 10:31:58  
11 health consequences of smoking at the time you 10:32:00  
12 graduated from high school in 1967? That's all I'm 10:32:04  
13 asking. 10:32:04  
14 MS. WALBURN: Objection; asked and 10:32:06  
15 answered. 10:32:06  
16 MS. JOHNSON: She's saying she can't 10:32:08  
17 answer it, you're saying she's answered it, and I 10:32:10  
18 just want to get an answer, so let me ask the  
19 question again. 10:32:12  
20 MS. WALBURN: I would caution you to -- 10:32:14  
21 MS. JOHNSON: You don't need to caution 10:32:16  
22 me.  
23 MS. WALBURN: Excuse me, I was speaking. 10:32:16  
24 We'll have one person speaking at a time. I'd 10:32:20  
25 caution you to try and keep your cool a little bit. 10:32:22

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1 The question's been asked and answered, and I'm 10:32:24  
2 entitled to make it. It's a proper objection. 10:32:26  
3 MS. JOHNSON: That's okay, you've made it, 10:32:28  
4 and I would like to ask the question again because 10:32:30  
5 the witness is saying she can't answer it and you're 10:32:32  
6 telling me it's been asked and answered. 10:32:34  
7 THE WITNESS: I --  
8 MS. WALBURN: Excuse me, there's no 10:32:34

9 question pending. 10:32:36  
10 MS. JOHNSON: Are you talking to me? 10:32:38  
11 MS. WALBURN: I'm speaking for the record 10:32:40  
12 that there's no question pending. And if you're 10:32:44  
13 part of this record, then, yes, I'm speaking to you, 10:32:46  
14 as well. 10:32:46  
15 BY MS. JOHNSON:  
16 Q. Did you have something to add to the last answer you 10:32:48  
17 were given? 10:32:48  
18 MS. WALBURN: Objection; form. 10:32:50  
19 THE WITNESS: No. If you want to ask it 10:32:54  
20 again. 10:32:54  
21 MS. JOHNSON: Can you read back the 10:32:58  
22 question, please. 10:32:58  
23 (The requested portion read back.) 10:33:16  
24 MS. WALBURN: Objection; asked and 10:33:18  
25 answered. 10:33:18

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1 THE WITNESS: What I'm saying is that 10:33:20  
2 sitting here today I cannot remember with any degree 10:33:24  
3 of certainty that I thought about the health 10:33:26  
4 consequences of smoking when I graduated from high 10:33:30  
5 school. I cannot remember. 10:33:32  
6 BY MS. JOHNSON:  
7 Q. And you had never heard cigarettes referred to as 10:33:42  
8 "coffin nails" at the time of your graduation; is 10:33:46  
9 that right?  
10 MS. WALBURN: Objection; asked and 10:33:48  
11 answered. 10:33:48

12 THE WITNESS: That's right. 10:33:48  
13 BY MS. JOHNSON:  
14 Q. You had never heard -- 10:33:50  
15 A. As much as I can remember. 10:33:52  
16 Q. You had never heard cigarettes referred to as 10:33:54  
17 "cancer sticks" by the time you graduated from high 10:33:56  
18 school? 10:33:56  
19 MS. WALBURN: Objection; asked and 10:33:58  
20 answered. 10:33:58  
21 THE WITNESS: That's right, as far as I 10:34:00  
22 can remember. 10:34:00  
23 BY MS. JOHNSON:  
24 Q. And you had never heard smokers referred to as 10:34:02  
25 having had "nicotine fits" at the time you graduated 10:34:04

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1 from high school in 1967 -- 10:34:08  
2 MS. WALBURN: Objection. 10:34:08  
3 MS. JOHNSON: Will you let me finish? 10:34:10  
4 MS. WALBURN: Excuse me, Counsel, the 10:34:10  
5 witness -- I wish we had video here today to capture 10:34:18  
6 your demeanor. 10:34:18  
7 The witness was starting to answer. I was 10:34:20  
8 trying to interpose an objection. Now, if you want 10:34:20  
9 to slow down and have a proper proceeding here, I 10:34:22  
10 think we'll all get through this a little easier. 10:34:24  
11 MS. JOHNSON: I was in the middle of a 10:34:28  
12 question, which I will pick up again, and ask you 10:34:30  
13 not to interrupt me until I'm done. 10:34:36



14 BY MS. JOHNSON:

15 Q. Did you ever nag your parents about their smoking as 10:34:38

16 of 1967 when you graduated from high school? 10:34:42

17 A. I may have nagged my parents about smoking. 10:34:44

18 Q. Tell me about that. 10:34:46

19 A. I didn't like if they smoked in the car. 10:34:48

20 Q. Why not? 10:34:48

21 A. Because it stank. 10:34:52

22 Q. And what would you say to them? 10:34:54

23 A. Can I roll down the window? 10:34:56

24 Q. And what would they say? 10:34:56

25 A. Dad would say okay and mom would say it will mess my 10:35:00

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1 hair. 10:35:00

2 Q. And so what would happen, the window would get 10:35:04

3 rolled down or -- 10:35:06

4 A. Some days I'd win, some days they'd win. 10:35:10

5 Q. So you nagged your parents on more than one occasion 10:35:12

6 about their smoking; is that right? 10:35:14

7 A. In the car, yes. 10:35:14

8 Q. How many times would you say you nagged your parents 10:35:20

9 in the car about their smoking? 10:35:22

10 A. Probably a dozen times. 10:35:26

11 Q. Did you ever ask them to quit? 10:35:28

12 A. No. During high school and junior high, I never 10:35:34

13 asked them to quit. 10:35:34

14 Q. Did you ever have any conversations with them about 10:35:42

15 quitting smoking? 10:35:44

16 A. During junior high and high school? 10:35:46

17 Q. Yes. 10:35:46  
18 A. No. Although, I'll retract that because I can't 10:35:52  
19 remember. On the occasion of my dad quitting, which 10:35:58  
20 was probably 1965, I can't remember if we actually 10:36:04  
21 talked about it, about his quitting. 10:36:08  
22 Q. So you might have had a conversation? 10:36:10  
23 A. It's possible that we had a conversation about him 10:36:12  
24 quitting, but I can't, sitting here today, remember 10:36:14  
25 that conversation. 10:36:16

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1 Q. And after your dad quit in '65, did he ever nag your 10:36:24  
2 mother to join him and quit after '65? 10:36:26  
3 A. I don't know. I don't know. He didn't nag her in 10:36:34  
4 front of me. 10:36:34  
5 Q. So he may have nagged her behind your back about 10:36:42  
6 come on, stop smoking? 10:36:44  
7 MS. WALBURN: Objection; calls for 10:36:46  
8 speculation. 10:36:46  
9 MS. JOHNSON: Excuse me. 10:36:48  
10 MS. WALBURN: You know, you paused, the 10:36:50  
11 witness was starting to answer, I'm allowed to 10:36:52  
12 assert an objection at that time. 10:36:54  
13 Now, if you want to slow this proceeding 10:36:54  
14 down, I'd caution you to speak slower and I would 10:36:56  
15 ask Professor Perry to pause enough after the 10:37:00  
16 question so that if an objection is proper we can 10:37:04  
17 have the time to intersperse that. 10:37:04  
18 MS. JOHNSON: Are you done? 10:37:12

19 MS. WALBURN: I think it's obvious that 10:37:14  
20 I'm done. 10:37:14  
21 BY MS. JOHNSON:  
22 Q. Do you want to answer my question now? 10:37:20  
23 A. Would you ask it again? I'm sorry. 10:37:22  
24 Q. Is it possible after your dad quit smoking in 1965, 10:37:26  
25 a year after the first Surgeon General's Report on 10:37:28

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1 Smoking and Health, that your father asked your 10:37:30  
2 mother to quit smoking, as well? 10:37:32  
3 MS. WALBURN: Objection; form, calls for 10:37:32  
4 speculation. 10:37:34  
5 THE WITNESS: It -- I can't say with any 10:37:40  
6 degree of certainty. I never observed my father 10:37:42  
7 nagging my mother, but it is possible that he asked 10:37:46  
8 her to quit. 10:37:48  
9 BY MS. JOHNSON:  
10 Q. Okay. In 1967, you go off to college at UCLA; is 10:38:04  
11 that right?  
12 A. Yes. 10:38:04  
13 Q. And you got a Bachelor's Degree? 10:38:08  
14 A. Yes, I did. 10:38:08  
15 Q. What did you get your degree in? 10:38:10  
16 A. In mathematics. 10:38:10  
17 Q. What kinds of courses do you take to get a degree in 10:38:18  
18 mathematics? 10:38:18  
19 A. You take two years of calculus. You take a year of 10:38:22  
20 differential equations. Then you take differential 10:38:24  
21 geometry, about a year of differential geometry. 10:38:30

22 And then I also took courses on the actual teaching 10:38:36  
23 of math. 10:38:36  
24 Q. I'm sorry? 10:38:36  
25 A. On the teaching of math, as well. 10:38:38

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1 Q. Did you take any other courses that you recall? 10:38:42  
2 A. While I was at UCLA? 10:38:44  
3 Q. Yes. 10:38:44  
4 A. Sure, I had to have a minor. My minor was -- 10:38:50  
5 Q. What was your minor? 10:38:50  
6 A. Social sciences. And I had almost the equivalent to 10:38:56  
7 a major in psychology. Almost equivalent to major 10:39:00  
8 in English. So I took a lot of psychology classes 10:39:04  
9 and English classes. 10:39:08  
10 I took dance classes. I took art history 10:39:16  
11 classes. I took philosophy. I took a year of 10:39:20  
12 physics. I think I took two quarters of economics. 10:39:36  
13 And that's -- I may have taken others. I can't 10:39:40  
14 remember all of those. 10:39:40  
15 Q. So you were in college during the Vietnam era? 10:39:48  
16 A. I was, yes. 10:39:48  
17 Q. Did you keep up with current events in college? 10:39:54  
18 A. Moderately. 10:39:56  
19 Q. Can you explain that? 10:39:58  
20 A. Well, I'd say for the first two years of college I 10:40:06  
21 didn't keep up with current events at all. Then 10:40:08  
22 everyone was getting upset about Vietnam, and I got 10:40:12  
23 upset, too. There was also some interest in the use 10:40:20

24 of immigrant labor, and I was interested in that. 10:40:26

25 Q. While you were at UCLA, did you ever smoke a 10:40:30

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1 cigarette? 10:40:30

2 A. No, I didn't. 10:40:32

3 Q. Did you ever take a puff off of anyone else's 10:40:34

4 cigarette? 10:40:34

5 A. No, I didn't. 10:40:36

6 Q. Were you ever around other people who were smoking 10:40:38

7 cigarettes? 10:40:38

8 A. During college? 10:40:40

9 Q. During college. 10:40:40

10 A. No, I don't think so. I may have been, but I don't 10:40:44

11 remember being around smokers. 10:40:48

12 Q. Did you observe students on campus using LSD? 10:40:50

13 MS. WALBURN: Objection. Is there some 10:40:52

14 relevance to this? 10:40:54

15 THE WITNESS: I don't think I ever 10:41:02

16 observed anyone. 10:41:02

17 BY MS. JOHNSON:

18 Q. You were aware, though, that students on campus were 10:41:04

19 using LSD? 10:41:06

20 A. Yes, of course. 10:41:06

21 Q. And you were aware, of course, that students at UCLA 10:41:10

22 during this time period were also smoking marijuana, 10:41:14

23 right? 10:41:14

24 A. Yes. 10:41:14

25 Q. Do you recall any commercial advertising for LSD on 10:41:20

1 campus? 10:41:20

2 A. No, I don't. 10:41:24

3 Q. Do you recall any commercial advertising for 10:41:26

4 marijuana on campus? 10:41:32

5 A. No, I don't. 10:41:34

6 Q. Now, 1967 to 1971, that's five years after the first 10:41:42

7 Surgeon General's Report came out in 1964. While 10:41:48

8 you were in college, did you ever think about 10:41:52

9 cigarette smoking? 10:41:56

10 MS. WALBURN: Objection; compound 10:42:00

11 question, form. 10:42:00

12 THE WITNESS: While I was in college, I 10:42:10

13 don't remember thinking about cigarette smoke. 10:42:12

14 BY MS. JOHNSON:

15 Q. While you were in college, did you ever hear 10:42:16

16 cigarettes referred to as "cancer sticks"? 10:42:18

17 A. Not that I can remember. 10:42:24

18 Q. Did you ever hear cigarettes referred to as "coffin 10:42:28

19 nails" while you were in college? 10:42:28

20 A. Not that I can remember. 10:42:30

21 Q. Did you ever hear smokers referred to as having 10:42:32

22 "nicotine fits" while you were in college? 10:42:34

23 A. Not that I can remember. 10:42:36

24 Q. If someone had walked up to you and said, "smoking's 10:42:38

25 bad for your health," would you have recoiled in 10:42:40

1 surprise? 10:42:42

2 MS. WALBURN: Objection; calls for 10:42:44

3 speculation. 10:42:44

4 THE WITNESS: I think at that time I 10:42:50

5 probably would have gotten the gist that smoking 10:42:58

6 wasn't good for health I think by college age. It 10:43:00

7 wasn't something I was focusing on at that time. 10:43:02

8 BY MS. JOHNSON:

9 Q. But you had a general sense that smoking was not 10:43:06

10 good for health? 10:43:06

11 A. Certainly by 1971 I would have had that. 10:43:08

12 Q. And why do you pick 1971? 10:43:12

13 A. That's when I graduated from -- 10:43:14

14 Q. Do you recall any event related to your graduation 10:43:16

15 that makes you pinpoint that date as the date that 10:43:18

16 you, seven years after the Surgeon General, now are 10:43:22

17 coming into the picture? 10:43:24

18 A. No, just because you had said five years after the 10:43:28

19 Surgeon General's Report. This was I actually 10:43:30

20 graduated seven years after, and up to that time 10:43:34

21 period, 1971, I don't remember. 10:43:38

22 Q. So prior to 1971, you thought smoking was a healthy 10:43:44

23 thing to do? 10:43:44

24 MS. WALBURN: Objection. 10:43:44

25 THE WITNESS: That's not what I said. 10:43:48

1 What I said was that by 1971 I probably thought it 10:43:54

2 was unhealthy. 10:43:54

3 BY MS. JOHNSON:

4 Q. Would you have probably thought that in 1970? 10:43:56

5 MS. WALBURN: Objection; calls for 10:43:58

6 speculation. 10:44:00

7 THE WITNESS: Somewhere during the college 10:44:00

8 time, and I can't, '70, '69, '68, I can't pinpoint 10:44:08

9 it. But during that time, I became more interested 10:44:10

10 in health generally, and so smoking would have fit 10:44:16

11 in with my own thinking about health. 10:44:18

12 BY MS. JOHNSON:

13 Q. Okay. But I just want to clarify one thing then. 10:44:22

14 Up until college, you thought that smoking was good 10:44:28

15 for you? 10:44:28

16 MS. WALBURN: Objection; misstates the 10:44:32

17 testimony. 10:44:34

18 MS. JOHNSON: I'm trying -- 10:44:36

19 MS. WALBURN: Excuse me, I'm speaking. 10:44:36

20 And asked and answered. 10:44:38

21 THE WITNESS: I don't think that's what I 10:44:40

22 said. I think I said that during -- after the 10:44:44

23 Surgeon General's Report, I may have had 10:44:46

24 conversations with my father about quitting. 10:44:50

25 And somewhere I would have gotten the idea 10:44:56

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1 that it wasn't healthy. But I'm -- but I can't 10:45:00

2 remember that with 100 percent certainty. Sometime 10:45:04

3 during college, I'm quite sure I came to the 10:45:06

4 conclusion that smoking wasn't healthy. 10:45:08



5 BY MS. JOHNSON:

6 Q. And you mentioned that you didn't keep up with 10:45:10  
7 current events in high school because you were 10:45:12  
8 engaged in a number of activities, including 10:45:16  
9 swimming? 10:45:16

10 A. Yeah. 10:45:16

11 Q. And did you jog, as well? 10:45:18

12 A. No. Well, I jogged a little in college. 10:45:20

13 Q. In high school you were -- you swam? 10:45:24

14 A. I did swim in college, yes. 10:45:26

15 Q. And did you ever hear that smoking could cut your 10:45:30  
16 wind as an athlete? 10:45:32

17 MS. WALBURN: What period of time are we 10:45:32  
18 talking about? 10:45:34

19 THE WITNESS: During college, I was only 10:45:38  
20 on the swim team for about four weeks because I 10:45:44  
21 couldn't keep the early morning schedule of a 10:45:48  
22 zillion laps. 10:45:54

23 To answer your question, I don't remember 10:45:56  
24 hearing that it would cut your wind. Though, I 10:45:58  
25 might have come to that -- I might have come to that 10:46:02

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1 -- my interest in health generally increased during 10:46:04  
2 college. Not from my course work, but just my own 10:46:10  
3 personal interest in health. 10:46:12

4 So sometime during that, I might have 10:46:14  
5 gotten that idea. 10:46:14

6 BY MS. JOHNSON:

7 Q. Okay. Then just to clarify, since your attorneys 10:46:18

8 asked a question about the time frame, before you 10:46:24  
9 started college, you thought smoking was good for 10:46:30  
10 health? 10:46:30  
11 MS. WALBURN: Objection; asked and 10:46:32  
12 answered. 10:46:32  
13 MS. JOHNSON: I'm trying -- 10:46:32  
14 MS. WALBURN: Excuse me, I'm speaking. 10:46:32  
15 Objection; asked and answered, misstates the 10:46:34  
16 testimony. 10:46:34  
17 THE WITNESS: As I said before, I never -- 10:46:40  
18 I don't think I ever thought smoking was good for 10:46:42  
19 health. I don't think I -- 10:46:42  
20 BY MS. JOHNSON:  
21 Q. Okay. Thank you. Now you graduated from UCLA in 10:46:52  
22 1971? 10:46:52  
23 A. Yes. 10:46:52  
24 Q. And your degree was in mathematics? 10:46:56  
25 A. Right. 10:46:56

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1 Q. And in 1971 you entered graduate school at 10:47:04  
2 UC-Davis? 10:47:06  
3 A. That's right. 10:47:06  
4 Q. And you got your Master's Degree? 10:47:08  
5 A. That's right. 10:47:10  
6 Q. You got your Master's Degree in what? 10:47:12  
7 A. In education. 10:47:12  
8 Q. Okay. Now, this is seven years after the '64 report 10:47:18  
9 that you entered the Master's program at UC-Davis, 10:47:22

10 and you got your Master's Degree in education. What 10:47:24  
11 does that mean? 10:47:26  
12 A. It means two things. One, I was getting my teaching 10:47:30  
13 credentials, so that I was becoming -- I got, in 10:47:36  
14 fact, a lifelong license to teach in the State of 10:47:40  
15 California from K through 12. 10:47:44  
16 I got an administrative certificate so 10:47:46  
17 that I could also administer schools, if I chose to 10:47:50  
18 do that, in the State of California. And I did -- I 10:47:54  
19 learned research methods or research methods in 10:47:58  
20 education. 10:48:00  
21 And then I specifically looked at the 10:48:04  
22 development of math and other kinds of programs. 10:48:08  
23 Q. So you got your Master's Degree so that you could 10:48:16  
24 then teach K through 12 grades? 10:48:20  
25 A. Yeah, I got my -- well, actually, I went to 10:48:26

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1 UC-Davis, I really was hoping to get a doctorate 10:48:32  
2 degree. I became very interested in the development 10:48:36  
3 of materials for children and adolescents during my 10:48:42  
4 last year at UCLA. 10:48:44  
5 And I was advised to teach and to get some 10:48:50  
6 experience with adolescents. I had already selected 10:48:54  
7 adolescents. I was also advised to not just get a 10:48:58  
8 secondary credential, but to get a primary 10:49:00  
9 credential, as well. 10:49:02  
10 Q. And the secondary credential was? 10:49:04  
11 A. Grades -- I think at that point it was grades 7 10:49:10  
12 through 12, but it may have been 6 through 12. 10:49:12

13 Q. And the primary credential was? 10:49:14  
14 A. It's either K or 1 through 6, they overlapped. 10:49:18  
15 Q. Okay, the whole range of pre -- 10:49:20  
16 A. It's kids, yeah. 10:49:22  
17 Q. While you were in the Master's program in California 10:49:34  
18 in 1971 to 1973 getting your credentials so that you 10:49:38  
19 could go into the public school system to teach 10:49:42  
20 children, did you get any training on health 10:49:48  
21 education and how it should be taught to children? 10:49:50  
22 A. None. 10:49:50  
23 Q. Did you get any education on -- 10:49:56  
24 A. None that I can remember. I suppose -- none that I 10:50:00  
25 can remember sitting here today. 10:50:00

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1 Q. And so nothing that you learned in the Master's 10:50:04  
2 program at UC-Davis touched on the State of 10:50:08  
3 California's views about tobacco use? 10:50:12  
4 MS. WALBURN: Objection; misstates the 10:50:14  
5 testimony. 10:50:14  
6 THE WITNESS: Nothing that I learned 10:50:20  
7 during my Master's program had to do with health 10:50:22  
8 education that I can remember. 10:50:24  
9 BY MS. JOHNSON:  
10 Q. Okay, now, I said smoking. 10:50:26  
11 A. Oh, smoking. No, not that I can remember. 10:50:30  
12 Q. So six, seven, eight years after the first Surgeon 10:50:42  
13 General's Report, the State of California is telling 10:50:44  
14 students that it is giving credentials to go out 10:50:50

15 into the public school system to teach nothing about 10:50:54  
16 smoking? 10:50:54  
17 MS. WALBURN: Objection; asked and 10:51:04  
18 answered and misstates the testimony. 10:51:04  
19 THE WITNESS: As far as I can remember, 10:51:06  
20 sitting here today, I personally received no 10:51:10  
21 information about how to teach about smoking. 10:51:14  
22 BY MS. JOHNSON:  
23 Q. Okay. Let me be more clear because I'm not asking 10:51:18  
24 you about how to teach about smoking or how to teach 10:51:20  
25 health education, I'm asking you very simply while 10:51:24

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1 you were being trained by a California institution, 10:51:34  
2 seven, eight years after the first Surgeon General's 10:51:36  
3 Report on smoking comes out, what did they cover on 10:51:44  
4 the topic of smoking? 10:51:46  
5 MS. WALBURN: Objection; asked and 10:51:48  
6 answered. 10:51:48  
7 THE WITNESS: Sitting here today, I 10:51:50  
8 believe that they covered nothing on that topic, as 10:51:58  
9 far as I can remember, nothing. 10:52:00  
10 BY MS. JOHNSON:  
11 Q. So as far as you know, as you sit here today, 10:52:04  
12 California had no laws when it came to teaching 10:52:06  
13 children about the risks of smoking? 10:52:10  
14 MS. WALBURN: Objection; misstates the 10:52:12  
15 testimony. 10:52:12  
16 THE WITNESS: I don't know if they had 10:52:16  
17 laws at that point. They may or may not have had 10:52:18

18 laws at that point. 10:52:20  
19 BY MS. JOHNSON:  
20 Q. And as you sit here today, you don't know whether 10:52:24  
21 the State of California had any curriculum guides 10:52:28  
22 when it came to the topic of teaching children about 10:52:32  
23 the risks of smoking? 10:52:36  
24 A. In 1971, '72, I don't know that, no. I don't know. 10:52:42  
25 Q. And is it fair to say that not a single time while 10:52:46

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1 you were in the Master's program at UC-Davis, you 10:52:50  
2 never came across teaching materials having to do 10:52:54  
3 with the risks of smoking? 10:53:04  
4 A. I don't remember ever seeing teaching materials 10:53:04  
5 having to do with the risks of smoking during that 10:53:06  
6 time. 10:53:06  
7 Q. So you never came across resource kits for teachers 10:53:06  
8 that were approved by the state board of education 10:53:08  
9 to be used in teaching K through 12 in California 10:53:12  
10 public schools; is that your testimony? 10:53:12  
11 A. Teaching about smoking in K through 12? Did you say 10:53:20  
12 teaching? 10:53:20  
13 Q. If you don't understand the question, we'll have the 10:53:22  
14 court reporter read it back. 10:53:24  
15 THE WITNESS: Yeah, I want to make sure I 10:53:26  
16 got the full question. 10:53:28  
17 (The requested portion read back.) 10:53:44  
18 THE WITNESS: See, it doesn't say smoking 10:53:46  
19 anywhere in the question, you said teaching kids, to 10:53:52

20 teach kids smoking. 10:53:52  
21 BY MS. JOHNSON:  
22 Q. About smoking, that's what we're talking about, 10:53:54  
23 smoking, the risks of smoking. 10:53:58  
24 Were there any resource materials that you 10:53:58  
25 were aware of while you were in the Master's program 10:54:00

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1 that emanated from the California State Board of 10:54:04  
2 Education that had to do with the risks of smoking 10:54:06  
3 cigarettes? 10:54:06  
4 A. I do not remember ever seeing one. 10:54:10  
5 Q. Never? 10:54:12  
6 MS. WALBURN: Objection; asked and 10:54:14  
7 answered. 10:54:14  
8 THE WITNESS: I do not remember ever 10:54:16  
9 seeing one. 10:54:16  
10 BY MS. JOHNSON:  
11 Q. And you don't remember ever seeing any film strips 10:54:18  
12 that were made available by the California State 10:54:22  
13 Board of Education in '71 to '73 about the risks of 10:54:26  
14 smoking; is that your testimony? 10:54:28  
15 A. Yes, I do not remember ever seeing any film strips, 10:54:32  
16 kits or anything that came from the State of 10:54:34  
17 California about teaching smoking during my time 10:54:38  
18 '71, '72. 10:54:40  
19 Q. You keep throwing in the phrase "about teaching 10:54:42  
20 smoking," and I'm not -- I presume you never took a 10:54:46  
21 course to teach kids how to smoke; is that correct? 10:54:48  
22 A. I never took a course in teaching kids how to smoke, 10:54:54

23 no. 10:54:54  
24 Q. Let's just be clear. All I'm talking about is if 10:54:58  
25 the four corner subject matter of the material has 10:55:00

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1 to do with smoking, then that's what I'm talking 10:55:02  
2 about when I talk about these materials. 10:55:04  
3 I'm not talking about methods of handing 10:55:06  
4 the information over. I'm just talking simple and 10:55:10  
5 straightforward. I don't have a Ph.D. in 10:55:12  
6 education. 10:55:12  
7 I'm asking you, as you sit here today, 10:55:14  
8 that between 1971 and 1973 while you were in the 10:55:16  
9 Master's program at UC-Davis, is it your testimony 10:55:20  
10 that not once, as you recall, did you see any 10:55:24  
11 materials from the California Board of Education 10:55:26  
12 that had anything to do with smoking? 10:55:32  
13 A. Yes. 10:55:32  
14 MS. WALBURN: Objection; asked and 10:55:34  
15 answered. 10:55:34  
16 THE WITNESS: Yes, I do not remember ever 10:55:38  
17 seeing anything having to do with smoking. 10:55:40  
18 BY MS. JOHNSON:  
19 Q. You never saw any laws restricting smoking on school 10:55:44  
20 grounds? 10:55:44  
21 A. During that period, no. 10:55:50  
22 Q. You never saw any community-based materials provided 10:55:56  
23 to the school system that talked about smoking? 10:56:00  
24 A. At that point, no. 10:56:04



25 Q. You never even heard of any such materials? 10:56:10

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1 A. I cannot remember during that period, '71 to '73, 10:56:16  
2 even hearing of those materials. 10:56:18

3 Q. Okay. And did you graduate from this program? 10:56:20

4 A. Yes. Yes, I did graduate from the program. 10:56:22

5 Q. And while you were in that program, did you ever 10:56:26  
6 smoke a cigarette? 10:56:26

7 A. No, I didn't. 10:56:26

8 Q. Did you ever take a puff off a cigarette? 10:56:30

9 A. No, I didn't. 10:56:30

10 Q. Did you keep up with current events while you were 10:56:34  
11 in grad school? 10:56:38

12 A. No, I don't believe I did. 10:56:40

13 Q. Never read a magazine? 10:56:40

14 A. Oh, I'm sure I read a magazine, but I can't remember 10:56:44  
15 which magazines at this point. 10:56:46

16 Q. Would you have read "Life" magazine? 10:56:48

17 A. Probably not. 10:56:50

18 Q. "Time" magazine? 10:56:50

19 MS. WALBURN: Objection; calls for 10:56:52  
20 speculation. 10:56:52

21 THE WITNESS: I can't remember which 10:56:56  
22 magazines. I don't believe I subscribed to any 10:57:02  
23 magazines during that time. 10:57:02

24 BY MS. JOHNSON:

25 Q. Did you have a television set? 10:57:06

1 A. I did not have a television set during that time. 10:57:08  
2 Q. So you were pretty atypical, weren't you, for 10:57:14  
3 somebody at that time? 10:57:16  
4 A. Yeah, I would say I was atypical in terms of not 10:57:18  
5 having a television set. 10:57:20  
6 Q. You graduated from the Master's program in 1972. As 10:57:24  
7 of 1972, did you believe that smoking was good for 10:57:26  
8 your health or that it could have adverse health 10:57:30  
9 effects? 10:57:30  
10 MS. WALBURN: Objection; asked and 10:57:30  
11 answered. 10:57:30  
12 THE WITNESS: I graduated from the 10:57:32  
13 Master's program in 1973. I believe I got my 10:57:36  
14 credential in 1972. And I got my Master's in 1973. 10:57:44  
15 And at that point, I'm pretty sure I thought smoking 10:57:48  
16 was harmful to one's health. 10:57:50  
17 BY MS. JOHNSON:  
18 Q. All right. Now, when you graduated from UCLA and 10:58:00  
19 while you were still at UC-Davis, you actually 10:58:02  
20 taught school, didn't you? 10:58:04  
21 A. I did teach school. In Davis I taught school. 10:58:10  
22 Q. And, in fact, you taught in the Davis and Sacramento 10:58:14  
23 Joint Unified School District; is that correct? 10:58:18  
24 A. They're actually two school districts, Sacramento 10:58:22  
25 Joint Unified School District and Davis Joint 10:58:24

1 Unified School District. And I also taught summer 10:58:28  
2 school at Travis Air Force base. 10:58:30  
3 Q. Looking at the schools in Davis and Sacramento, what 10:58:42  
4 grades did you teach? 10:58:46  
5 A. In Sacramento, I taught grades 7, 8 and 9. And in 10:58:46  
6 Davis, I taught grades 9, 10, 11 and 12, and I may 10:58:56  
7 have taught 8th graders, but I can't remember. 10:59:00  
8 Q. What subjects did you teach in the Sacramento school 10:59:04  
9 district? 10:59:04  
10 A. I taught math and social studies and English 10:59:10  
11 reading, it may have been -- it may have been 10:59:18  
12 reading more than English, but it was in that area. 10:59:20  
13 Q. And at Davis? 10:59:22  
14 A. At Davis, I taught math. 10:59:24  
15 Q. Just math? 10:59:26  
16 A. No, I taught photography, also. Actually, it was a 10:59:32  
17 class called photo math. 10:59:34  
18 Q. And while you were a teacher in the Sacramento 10:59:40  
19 school district, did you try, as a teacher, to 10:59:42  
20 follow the state's curriculum for the subjects that 10:59:46  
21 you had responsibility for teaching? 10:59:48  
22 A. No, I didn't. 10:59:50  
23 Q. You didn't follow the state's curriculum? 10:59:52  
24 A. Not really. 10:59:52  
25 Q. And did you ignore what the state had to say when 10:59:58

1 you were at Davis, as well? 11:00:00  
2 MS. WALBURN: Objection; form. 11:00:04  
3 THE WITNESS: I didn't really know what 11:00:06

4 the state had to say in either of those cases. And 11:00:08  
5 really I didn't know what the state had to say. I 11:00:14  
6 pretty much developed my own program in Sacramento. 11:00:18  
7 BY MS. JOHNSON:  
8 Q. Is that what they taught you to do when you were in 11:00:20  
9 grad school, to ignore what the state curriculum 11:00:24  
10 is? 11:00:24  
11 MS. WALBURN: Objection; form. 11:00:26  
12 THE WITNESS: During my graduate training 11:00:30  
13 at Davis, I don't think they mentioned the state 11:00:34  
14 rules or curriculum. I can't actually remember them 11:00:38  
15 even mentioning the California state at all. 11:00:40  
16 BY MS. JOHNSON:  
17 Q. So you never -- as you were getting certified by the 11:00:44  
18 State of California to teach children, no one ever 11:00:46  
19 mentioned to you anything about the state board of 11:00:48  
20 education? 11:00:48  
21 MS. WALBURN: Objection; form. 11:00:50  
22 THE WITNESS: I knew I had to finish this 11:00:56  
23 program to get certified by the state. 11:00:58  
24 BY MS. JOHNSON:  
25 Q. And that's all you really cared about? 11:01:00

1 MS. WALBURN: Objection; form. 11:01:00  
2 THE WITNESS: What I cared about was 11:01:04  
3 teaching children and having them learn, and that 11:01:10  
4 was really my primary objective. I really -- now 11:01:14  
5 things are much more set in stone I think. 11:01:16

6 BY MS. JOHNSON:

7 Q. And you thought you really cared about teaching 11:01:18  
8 children, but you didn't really care about what the 11:01:20  
9 people who were training you to teach them thought 11:01:24  
10 about what should be taught to them? 11:01:26

11 MS. WALBURN: Objection; form, misstates 11:01:30  
12 the prior testimony, asked and answered. 11:01:32

13 THE WITNESS: The people who are training 11:01:36  
14 me at -- now, while I was at UC-Davis getting my 11:01:42  
15 teaching credential, I was also student teaching 11:01:44  
16 starting in 1971. 11:01:46

17 And the people that I was working with 11:01:50  
18 were highly creative people. And they taught me new 11:01:56  
19 ways to teach math, primarily. That was my major 11:02:02  
20 area I was going to teach. 11:02:04

21 And this didn't mean we were going to 11:02:06  
22 ignore algebra and geometry and trigonometry. I 11:02:10  
23 mean, we weren't going to ignore those subjects. 11:02:14  
24 But other than the general guidelines from the state 11:02:18  
25 that children who go to college have to take algebra 11:02:22

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1 and geometry, and there are certain things they need 11:02:24  
2 to know for their SAT test, we figured out, they 11:02:30  
3 taught me how to work with classrooms in new ways. 11:02:34

4 So those are the people who were my 11:02:38  
5 mentors, not the State of California, whoever they 11:02:42  
6 are.

7 BY MS. JOHNSON:

8 Q. Did your colleagues at Davis and Sacramento make an 11:02:56

9 effort to follow the state's curriculum? 11:02:58

10 A. I have no idea. 11:03:00

11 Q. Would you say that Davis and Sacramento were sort of 11:03:06

12 renegade school districts? 11:03:08

13 MS. WALBURN: Objection; form. 11:03:08

14 THE WITNESS: I'll separate the two. At 11:03:12

15 Sacramento, I don't know as much what my colleagues 11:03:14

16 did, I was so busy with my first year of teaching 11:03:18

17 that I don't really know what they did. 11:03:20

18 At Sacramento -- I mean, in Davis my 11:03:24

19 colleagues, I knew very well what they were doing in 11:03:28

20 the math department, which was my home, because one 11:03:32

21 of the people in the math department had written the 11:03:34

22 math textbook that we were using. 11:03:38

23 And I would say they weren't -- I would 11:03:40

24 not characterize them as renegades, but certainly -- 11:03:44

25 they were definitely at the front edge of math 11:03:48

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1 teaching. 11:03:50

2 BY MS. JOHNSON:

3 Q. Were teachers allowed to smoke openly at 11:03:54

4 Sacramento? 11:03:54

5 A. I don't believe so. 11:03:56

6 Q. What about at Davis? 11:03:58

7 A. No, I don't believe so. 11:03:58

8 Q. Why do you say you don't believe so? 11:04:00

9 A. Because I remember teachers smoking in the teacher's 11:04:04

10 lounge. 11:04:06

11 Q. So teachers weren't supposed to smoke in front of 11:04:08  
 12 children? 11:04:10  
 13 A. I believe so. I believe so. 11:04:12  
 14 Q. And you became a vice principal of one of the 11:04:22  
 15 schools in 1975; is that right? 11:04:24  
 16 A. I did, yes. 11:04:26  
 17 Q. Which school did you become an vice principal of? 11:04:28  
 18 A. Emerson Junior High School in Davis. 11:04:32  
 19 Q. And what were your responsibilities as a vice 11:04:36  
 20 principal of Emerson Junior High School at Davis? 11:04:38  
 21 A. I was responsible for school discipline, these are 11:04:46  
 22 7th, 8th and 9th graders. I was responsible for 11:04:52  
 23 building maintenance. I was the athletic director, 11:04:52  
 24 so I was responsible for all athletic events. 11:04:56  
 25 I was responsible for student activities 11:04:58

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1 and student council. I was responsible for 11:05:02  
 2 day-to-day activities in the school. I did some 11:05:08  
 3 teacher evaluations. 11:05:10  
 4 I'm sure there were other things, but 11:05:16  
 5 those were the major responsibilities. 11:05:18  
 6 Q. As a vice principal, did you ever discipline a 11:05:22  
 7 student for smoking? 11:05:24  
 8 A. Yes, I did. 11:05:24  
 9 Q. Can you tell me about that? 11:05:26  
 10 A. Yes. Students weren't supposed to be smoking. 11:05:32  
 11 Q. Is that a school -- 11:05:32  
 12 A. It was a school rule. They were not supposed to be 11:05:34  
 13 smoking on campus. And I believe that the -- I 11:05:42

14 believe that the penalty was one-day suspension, but 11:05:48  
15 I can't really remember that. 11:05:50  
16 Q. So that means a note would go home to the parent? 11:05:54  
17 A. No, it means that the student would not -- would be 11:05:58  
18 not allowed back in school for another whole day. 11:06:02  
19 Q. So you'd have to send a note home to the parent? 11:06:04  
20 A. No, not in Davis. 11:06:04  
21 Q. Just give them a day off? 11:06:08  
22 MS. WALBURN: Could we have one person 11:06:08  
23 speaking at a time, please. 11:06:10  
24 THE WITNESS: No, the student would come 11:06:14  
25 to my office. Usually they were referred to me. 11:06:18

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1 Sometimes I would find them, but usually someone 11:06:20  
2 else did. 11:06:22  
3 And they would admit to having smoked. I 11:06:26  
4 would immediately call the parent, explain the 11:06:30  
5 seriousness of the situation. The parent would come 11:06:34  
6 to school, talk with me. 11:06:38  
7 The student was then sent home. It may 11:06:42  
8 have been just sent home for the rest of that day. 11:06:44  
9 With the parent, there was always a parent, this was 11:06:48  
10 junior high, it was always with a parent. 11:06:50  
11 BY MS. JOHNSON:  
12 Q. When you would say sometimes you would find -- you 11:06:52  
13 would be the one finding the students smoking, where 11:06:56  
14 would you usually find them smoking? 11:06:56  
15 A. The favorite place were the bathrooms. 11:07:00



16 Q. And do you have any explanation for why they'd be 11:07:04  
17 smoking in the bathrooms as opposed to in the 11:07:06  
18 hallway? 11:07:08  
19 A. Yeah, because they wouldn't be detected. 11:07:10  
20 Q. Because they knew that it was a school rule? 11:07:18  
21 A. Exactly, knew that was the school rule. 11:07:20  
22 Q. When you called the parents in, you would tell them 11:07:28  
23 about the seriousness of the situation. What would 11:07:32  
24 you say to them, typically? 11:07:34  
25 A. I really don't remember exactly. I don't remember. 11:07:40

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1 I would say the child was caught smoking. It's 11:07:44  
2 against school rules and they're going to be 11:07:48  
3 suspended or, you know, they have to -- sometimes we 11:07:52  
4 had in school time-outs, so if two parents were 11:07:54  
5 working the kid would actually like sit in my office 11:07:58  
6 for the rest of the day. 11:08:00  
7 Q. Did you ever challenge the rule and say, "Well, why 11:08:02  
8 not just let them smoke?" 11:08:04  
9 A. No, I never said that. 11:08:06  
10 Q. So you thought the rule was a good rule? 11:08:10  
11 A. I thought the rule was -- the rule was a rule at 11:08:14  
12 that point. 11:08:16  
13 Q. And you agreed with it? 11:08:16  
14 A. I agreed with it, yeah. 11:08:20  
15 Q. And I also understand that sometime before you went 11:08:30  
16 to Stanford you were a tutor/governess for 11:08:34  
17 adolescents. What is that? 11:08:36  
18 A. That was during my time at UCLA. I tutored high 11:08:42

19 school, generally high school students, who were 11:08:46  
20 having trouble with math. They called in to a main 11:08:50  
21 line at UCLA and they were referred to me. 11:08:56  
22 Q. Somewhere in here you said you began to focus your 11:09:00  
23 interest on children? 11:09:02  
24 A. Yes. 11:09:04  
25 Q. At what time frame was that? 11:09:08

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1 A. I think it was 1970, '71. 11:09:22  
2 Q. Now, were you only a vice principal at Emerson 11:09:38  
3 Junior High School? 11:09:40  
4 A. Yes, I was. 11:09:42  
5 Q. Was that for one complete school year? 11:09:44  
6 A. One, yes. 11:09:44  
7 Q. During that one complete school year, approximately 11:09:46  
8 how many times would you say that you had to call 11:09:48  
9 parents about kids smoking in school? 11:09:52  
10 A. I think only maybe two or three times. Not many. 11:10:04  
11 It wasn't a daily occurrence. It was very few. 11:10:10  
12 Maybe two or three times. 11:10:10  
13 Q. As many as half a dozen? 11:10:12  
14 MS. WALBURN: Objection; misstates 11:10:14  
15 testimony, asked and answered. 11:10:14  
16 THE WITNESS: I can't remember precisely. 11:10:16  
17 BY MS. JOHNSON:  
18 Q. So you think it was more than once, less than three 11:10:20  
19 times? 11:10:22  
20 MS. WALBURN: Objection; asked and 11:10:24

21 answered. 11:10:26  
22 THE WITNESS: I can't remember precisely. 11:10:26  
23 I'd say more than once, less -- I don't want to be 11:10:30  
24 held under oath that I can't -- I can't remember 11:10:32  
25 exactly, but it wasn't a large number. 11:10:34

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1 BY MS. JOHNSON:  
2 Q. Was it more than half a dozen times? 11:10:36  
3 MS. WALBURN: Objection; asked and 11:10:38  
4 answered. 11:10:38  
5 THE WITNESS: I can't remember, but I 11:10:40  
6 don't think so.  
7 BY MS. JOHNSON:  
8 Q. Okay. Now, you were also an athletic director; is 11:10:44  
9 that correct?  
10 A. Yes, I was. 11:10:46  
11 Q. And does that mean that you were sometimes present 11:10:50  
12 at athletic events held at the school? 11:10:52  
13 A. Sometimes. 11:10:52  
14 Q. And were people allowed -- were students allowed to 11:10:56  
15 smoke at athletic events that were held at the 11:10:58  
16 school? 11:10:58  
17 A. You know, I can't remember. I don't remember seeing 11:11:02  
18 anyone smoking during those events, but I don't 11:11:10  
19 remember if there was a -- it was on school 11:11:10  
20 property, probably they couldn't smoke, but I don't 11:11:14  
21 remember exactly at this point. 11:11:18  
22 Q. Now, when you became the vice principal, who told 11:11:22  
23 you that it was the school rule that if a student is 11:11:24

24 found smoking, they have to be suspended? 11:11:28  
25 A. The principal told me. 11:11:30

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1 Q. Who was the principal? 11:11:30  
2 A. His name was Dr. Johnston, Bob Johnston. 11:11:40  
3 Q. Was he a medical doctor? 11:11:42  
4 MS. WALBURN: Excuse me, again, could we 11:11:42  
5 have just one person speaking at a time. 11:11:44  
6 BY MS. JOHNSON:  
7 Q. I'm going to ask the witness to raise her voice a 11:11:46  
8 little bit because I find it hard at times to hear 11:11:50  
9 exactly when you're done. 11:11:50  
10 MS. WALBURN: I'd agree if that's 11:11:52  
11 possible. I'd also state that if we slowed down a 11:11:54  
12 bit, we wouldn't have people talking over each 11:11:56  
13 other, as well. 11:11:58  
14 BY MS. JOHNSON:  
15 Q. Are we proceeding at a comfortable pace for you? 11:12:00  
16 A. It could be a little slower because I don't like to 11:12:04  
17 talk loudly. I could use a microphone, but -- 11:12:06  
18 Q. Dr. Johnston was the principal who informed you that 11:12:12  
19 the school rule of Emerson Junior High School was 11:12:14  
20 that students shall not smoke while in school? 11:12:16  
21 A. Yes. 11:12:16  
22 Q. And when he handed down that rule to you, what did 11:12:20  
23 he say to you? 11:12:20  
24 A. He said here's a list of school rules that you're 11:12:24  
25 responsible for enforcing. And among those, that 11:12:28

1 list, was that kids are not supposed to smoke on 11:12:34  
2 campus. 11:12:34  
3 Q. Were they supposed to smoke off campus? 11:12:38  
4 A. I don't think that was within our jurisdiction. 11:12:42  
5 Q. And did he tell you what the penalty was that you 11:12:48  
6 should hand out if a child was found smoking on 11:12:52  
7 campus? 11:12:52  
8 A. I'm sure he did. He told me everything about what I 11:12:56  
9 was supposed to be doing. 11:12:56  
10 Q. And so would he have also told you what to tell the 11:13:00  
11 parents when they came into your office after 11:13:02  
12 learning that their child had been caught smoking? 11:13:04  
13 A. Probably the first time he might have handled it and 11:13:08  
14 I would have sat in so that he could model for me 11:13:10  
15 how to do that. 11:13:12  
16 Q. And when the parents would come in after receiving 11:13:14  
17 this call from you, were they concerned, typically, 11:13:18  
18 that their child was smoking? 11:13:20  
19 MS. WALBURN: Objection; form. 11:13:24  
20 THE WITNESS: Parents are generally 11:13:30  
21 concerned if they're called by the vice principal to 11:13:34  
22 come to school, no matter what offense it was. And 11:13:38  
23 since I talked to parents almost every day about 11:13:40  
24 something, as far as I can remember, yes, they were 11:13:44  
25 concerned. 11:13:46

1 BY MS. JOHNSON:

2 Q. And no parent came in and said, "Oh, Vice Principal 11:13:52  
3 Perry, don't worry, we allow Johnny to smoke"? 11:13:54  
4 A. Not that I can remember, no. 11:13:56  
5 Q. You say you first began forming your interests in 11:14:02  
6 children in 1970, '71; is that right? 11:14:08  
7 A. It's somewhere during that time I began to focus in 11:14:12  
8 on children. 11:14:12  
9 Q. And since that time, you have devoted a good amount 11:14:16  
10 of your professional training and energy on the 11:14:22  
11 topic of youth; isn't that right? 11:14:26  
12 A. Yes, that's right. 11:14:26  
13 Q. And as an expert and someone who's devoted a 11:14:30  
14 professional lifetime to young people and the health 11:14:34  
15 and education of young people, who do you believe is 11:14:38  
16 responsible for protecting and overseeing the 11:14:40  
17 welfare of young people? 11:14:42  
18 A. I think that any -- really, everyone who affects 11:14:56  
19 young people is responsible. 11:14:58  
20 Q. Would family be included in your list? 11:15:02  
21 A. Sure, families have a responsibility for the welfare 11:15:06  
22 of their children. 11:15:08  
23 Q. And families, you mean a mother would have 11:15:12  
24 responsibility for the welfare and the education of 11:15:14  
25 a child? 11:15:14

1 A. Mother would be, of course, interested in the 11:15:20

2 welfare of the child and would have a 11:15:24

3 responsibility. 11:15:24

4 Q. And what about the father? 11:15:26

5 A. Yes, the father would have a responsibility. 11:15:30

6 Q. And what about aunts and uncles? Would they play a 11:15:42

7 role? 11:15:42

8 A. They would play a role, obviously, in the welfare of 11:15:44

9 children in general. It would depend on the 11:15:48

10 particular child. 11:15:50

11 Q. And -- 11:15:50

12 A. Whether they were responsible for a particular 11:15:54

13 child, but for children in general, of course 11:15:56

14 they're responsible. 11:15:56

15 Q. And how do parents play a role? 11:16:00

16 MS. WALBURN: Objection; form. 11:16:02

17 THE WITNESS: Parents have a 11:16:10

18 responsibility for their children in terms of 11:16:12

19 providing them with the basic needs as much as they 11:16:18

20 can. I think they are responsible for communicating 11:16:24

21 with them, for acting as good role models, as much 11:16:30

22 as they can. 11:16:30

23 BY MS. JOHNSON:

24 Q. And they, of course, have access to the children 11:16:40

25 from the time they're born? 11:16:42

1 A. The parents usually have access to the children 11:16:48

2 while the children are at home, they have some 11:16:52

3 access to them, we hope. And they can provide them 11:16:56

4 with certain opportunities or create certain 11:16:58

5 barriers. 11:16:58

6 Q. And they can also reinforce lessons that a child 11:17:02

7 might learn elsewhere? 11:17:04

8 A. They might be able to do that. 11:17:06

9 Q. And for at least some years of a child's life, a 11:17:12

10 parent is considered to be a credible source of 11:17:14

11 information? 11:17:16

12 A. Sure. 11:17:22

13 MS. WALBURN: Objection; form. 11:17:24

14 THE WITNESS: The parent for some kinds of 11:17:26

15 information is a credible source. For other times, 11:17:30

16 it's not. 11:17:30

17 BY MS. JOHNSON:

18 Q. And a parent would be an authoritative source to a 11:17:34

19 child; isn't that correct? 11:17:34

20 A. Not always, that is not correct, not on every 11:17:42

21 subject. 11:17:42

22 Q. But on some subjects? 11:17:46

23 A. I don't know if we could pick a -- I'd have to think 11:17:50

24 through whether we could pick a subject where the 11:17:52

25 parent would always be an authority to the child. 11:17:54

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1 To every child that may not be the case. 11:17:56

2 Q. But generally speaking, if you review the 11:17:58

3 literature, you would see that authority figures for 11:18:04

4 a child would include family members? 11:18:08

5 MS. WALBURN: Objection; form. 11:18:10

6 THE WITNESS: Well, I'm not sure exactly 11:18:18



7	what literature you're referring to.	11:18:20
8	BY MS. JOHNSON:	
9	Q. Let me state it differently. Are you saying that	11:18:22
10	family members are not authoritative sources of	11:18:26
11	information for children?	11:18:26
12	MS. WALBURN: Objection; misstates the	11:18:30
13	testimony, asked and answered.	11:18:30
14	THE WITNESS: I'd say parents may be	11:18:34
15	authoritative sources of information on some	11:18:38
16	subjects, may be.	11:18:40
17	BY MS. JOHNSON:	
18	Q. What about schools?	11:18:44
19	MS. WALBURN: Objection; form.	11:18:46
20	THE WITNESS: Can you be more specific?	11:18:50
21	BY MS. JOHNSON:	
22	Q. Well, I was asking you to list off, as an educator	11:18:58
23	and someone who has cared about children and their	11:19:02
24	health and education for virtually your entire	11:19:04
25	professional career, if you could list for me all of	11:19:06

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1	the individuals or groups responsible or who play a	11:19:12
2	role in looking after the health and welfare of	11:19:18
3	children, young people?	11:19:20
4	A. Right.	11:19:20
5	Q. And we talked about family. And now I'm asking you	11:19:24
6	whether schools would be in your list?	11:19:28
7	A. Schools, obviously, have a role, a role and	11:19:32
8	responsibility, vis-a-vis children.	11:19:36
9	Q. What is the role of the school?	11:19:38

10 A. I think it's really around their what I refer to as 11:19:44  
11 social health. 11:19:44  
12 Q. And what does social health refer to? 11:19:48  
13 A. Getting them ready for their -- to play a viable 11:19:54  
14 role in the society. 11:19:54  
15 Q. Would that include learning to eat in a healthful 11:19:58  
16 way? 11:19:58  
17 A. It may or may not. 11:20:02  
18 Q. Would it include instruction on the use of illicit 11:20:06  
19 drugs? 11:20:06  
20 A. It may or may not. 11:20:06  
21 Q. Would it include instruction on tobacco use? 11:20:10  
22 A. May or may not. 11:20:10  
23 Q. And you say it may not because those aren't 11:20:14  
24 necessarily things that you need to get ready to 11:20:16  
25 move on? 11:20:16

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1 MS. WALBURN: Objection; form. 11:20:18  
2 THE WITNESS: I say may or may not because 11:20:20  
3 depending on the culture or depending on the 11:20:26  
4 community, that health education or education on 11:20:32  
5 those topics might be seen as important. I don't 11:20:38  
6 think that schools see that as their primary role 11:20:40  
7 and responsibility. 11:20:40  
8 BY MS. JOHNSON:  
9 Q. Okay. Let's narrow down the cultures that we're 11:20:44  
10 talking about and focus just on the State of 11:20:46  
11 Minnesota. 11:20:46

12 Do you think that schools in the State of 11:20:50  
13 Minnesota play a role in protecting and overseeing 11:20:54  
14 the health and welfare of young people? 11:20:58  
15 A. Yes, I think the schools play a role. 11:21:00  
16 Q. And do the schools play a role when it comes to 11:21:04  
17 topics about how to live a healthful life? 11:21:08  
18 A. Schools play a role in providing knowledge about how 11:21:12  
19 to live a healthful life. 11:21:14  
20 Q. And you said -- 11:21:14  
21 A. Schools can provide that. 11:21:16  
22 Q. Excuse me? 11:21:16  
23 A. Schools can. They don't always do that, but they 11:21:20  
24 can provide that. 11:21:22  
25 Q. And do schools in Minnesota also have a 11:21:24

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1 responsibility for protecting and overseeing the 11:21:26  
2 health and welfare of young people? 11:21:28  
3 A. Schools, obviously, have a responsibility for the 11:21:40  
4 safety of children while they're on school 11:21:42  
5 property. They have a responsibility for I think 11:21:48  
6 under state law to teach about health topics. 11:21:52  
7 Q. And do those health topics include instruction on 11:21:58  
8 alcohol use? 11:21:58  
9 A. I think they include that under -- I think, I'm not 11:22:10  
10 sure alcohol is specific or if they put it under 11:22:12  
11 chemicals, or I'm not sure how it's worded. 11:22:16  
12 Q. The same for tobacco? 11:22:16  
13 A. I don't know. I believe tobacco is listed, but it 11:22:22  
14 may say tobacco, alcohol and other drugs. 11:22:24

15 Q. And why do you believe that schools have both a role 11:22:30  
16 and a responsibility when it comes to protecting and 11:22:32  
17 overseeing the health and welfare of young people? 11:22:34  
18 A. Well, I think what I said was that schools have a 11:22:48  
19 responsibility for providing safety, you know, the 11:22:56  
20 safety of the children while they're on their 11:23:00  
21 property. 11:23:00  
22 They have a role in providing health 11:23:02  
23 education, but I'm not sure that they have explicit 11:23:08  
24 responsibility in that. In the State of Minnesota, 11:23:12  
25 they have a responsibility to provide health 11:23:14

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1 education to students. 11:23:14  
2 Q. And that health education includes education about 11:23:16  
3 tobacco use? 11:23:18  
4 A. Yes. 11:23:18  
5 MS. WALBURN: Objection; asked and 11:23:20  
6 answered. 11:23:20  
7 BY MS. JOHNSON:  
8 Q. What about the state? 11:23:22  
9 MS. WALBURN: Objection; form. 11:23:26  
10 THE WITNESS: Could you ask the question? 11:23:30  
11 BY MS. JOHNSON:  
12 Q. It's the same question, but I'll ask it again. We 11:23:34  
13 were talking about those who were responsible for 11:23:36  
14 protecting and overseeing the health and welfare of 11:23:40  
15 young people, and we've already identified that the 11:23:42  
16 family plays a role, the parents play a role, the 11:23:46

17 extended families play a role, the schools play a 11:23:48  
18 role. 11:23:48  
19 And now I'm asking you about the state, 11:23:50  
20 does the state play a role in protecting and 11:23:52  
21 overseeing the health and welfare of young people? 11:23:54  
22 MS. WALBURN: Objection; form. 11:23:56  
23 THE WITNESS: I think the state plays a 11:24:00  
24 role in the health and welfare of young people. 11:24:04  
25 BY MS. JOHNSON:

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1 Q. And how does the state play a role? 11:24:14  
2 A. Generally, I'd say that the state plays a role 11:24:14  
3 through policy provision. 11:24:16  
4 Q. What kind of policy provisions are you referring 11:24:16  
5 to? 11:24:16  
6 A. Allocation of resources, laws, so forth. 11:24:20  
7 Q. When you're talking about allocation of resources, 11:24:26  
8 what kind of resources are you referring to? 11:24:26  
9 A. Well, the state allocates resources for funding to 11:24:30  
10 schools. 11:24:32  
11 Q. So by resources you mean money? 11:24:34  
12 A. Yes. 11:24:36  
13 Q. And what about laws? 11:24:38  
14 A. The state or the legislature passes laws that -- 11:24:44  
15 such as around food in the cafeteria. I think it's 11:24:52  
16 at the state level, but it may be at the school 11:24:54  
17 district level, maybe national level, types of food 11:24:58  
18 in school, safety standards in school. 11:25:02  
19 I think that there's a state law for 11:25:04

20 alcohol use among athletes. 11:25:10  
21 Q. What about state laws with regard to tobacco use? 11:25:14  
22 MS. WALBURN: Objection; form. 11:25:16  
23 THE WITNESS: Can you expand on that 11:25:22  
24 question? What about state laws? 11:25:26  
25 BY MS. JOHNSON:

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1 Q. Does the State of Minnesota have any laws when it 11:25:28  
2 comes to tobacco use and children? 11:25:30  
3 A. Yes. The State of Minnesota doesn't allow anyone to 11:25:34  
4 sell to anyone under 18. 11:25:36  
5 Q. Do you have any understanding of why the State of 11:25:40  
6 Minnesota has a law that you cannot sell tobacco 11:25:40  
7 products to anyone under 18? 11:25:42  
8 A. Yes, because they don't want tobacco to be sold to 11:25:48  
9 minors. 11:25:48  
10 Q. Do you have any understanding as to why the State of 11:25:50  
11 Minnesota does not want minors to purchase tobacco 11:25:54  
12 products? 11:25:54  
13 A. I don't actually know how the state feels about 11:26:02  
14 that. And so if I said anything, it would be 11:26:04  
15 speculation. I mean, I haven't studied why the 11:26:08  
16 state would do that. But I would imagine, you 11:26:12  
17 know -- I don't really want to speculate. 11:26:14  
18 Q. So you have no understanding at all as to why the 11:26:20  
19 State of Minnesota has a law that says you can't 11:26:20  
20 sell cigarettes to minors? 11:26:22  
21 MS. WALBURN: Objection; asked and 11:26:24

22 answered, form. 11:26:24  
23 THE WITNESS: The State of Minnesota has a 11:26:26  
24 law not to sell to those under 18. I believe that 11:26:30  
25 law has been in effect for decades. I don't know 11:26:34

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1 what went into the thinking at the time when that 11:26:38  
2 law went into effect. 11:26:40  
3 BY MS. JOHNSON:  
4 Q. Do you have any understanding as to what the 11:26:42  
5 thinking is in having the law still on the books 11:26:46  
6 today? 11:26:46  
7 MS. WALBURN: Objection; form. 11:26:48  
8 THE WITNESS: I don't think anyone really 11:26:58  
9 wants to -- I mean, I think -- no, I don't, 11:27:02  
10 actually. I don't really know the thinking on 11:27:06  
11 that. 11:27:14  
12 Can we take a break? 11:27:14  
13 MS. WALBURN: Sure. Five-minute break. 11:27:16  
14 MR. GARY WILSON: 11:27. 11:27:20  
15 (Off the record.) 11:27:22  
16 MS. JOHNSON: Back on the record. 11:37:44  
17 MR. GARY WILSON: 11:37. 11:37:50  
18 BY MS. JOHNSON:  
19 Q. Professor Perry, you would agree with me, wouldn't 11:37:58  
20 you, that the State of Minnesota has some 11:38:00  
21 responsibility for protecting and overseeing the 11:38:04  
22 health and welfare of young people; isn't that 11:38:06  
23 right? 11:38:06  
24 MS. WALBURN: Objection; asked and 11:38:08

25 answered. 11:38:08

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1 THE WITNESS: I'd say the State of 11:38:12  
2 Minnesota has some responsibility. 11:38:12

3 BY MS. JOHNSON:

4 Q. And part of that responsibility is to the policies 11:38:18  
5 on how to allocate resources? 11:38:20

6 MS. WALBURN: Objection; asked and 11:38:22  
7 answered. 11:38:22

8 THE WITNESS: Part of that responsibility 11:38:24  
9 includes policy formation. Policy formation may 11:38:28  
10 include allocation of resources, such as for 11:38:36  
11 schooling. 11:38:36

12 BY MS. JOHNSON:

13 Q. And part of the role is also with respect to laws, 11:38:40  
14 as we said before the break, laws restricting sales 11:38:44  
15 of cigarettes to minors? 11:38:46

16 MS. WALBURN: Objection; asked and 11:38:48  
17 answered. 11:38:48

18 THE WITNESS: I don't have anything more 11:38:50  
19 to add. 11:38:50

20 BY MS. JOHNSON:

21 Q. And can you think of any other way in which the 11:38:54  
22 State of Minnesota has some responsibility or plays 11:38:56  
23 some role in the health and welfare of young 11:38:58  
24 people? 11:39:00

25 MS. WALBURN: Objection; form. 11:39:06



1 THE WITNESS: No, not really. I think of 11:39:22  
2 the state as a policy-making body. 11:39:24  
3 BY MS. JOHNSON:  
4 Q. And this policy would also extend to education; 11:39:28  
5 isn't that right? 11:39:28  
6 A. The state, in part, is responsible for education. 11:39:34  
7 As you know, things are quite mixed up in terms of 11:39:38  
8 the national. At the national level, there's 11:39:40  
9 certain requirements. 11:39:44  
10 At the state level, there are certain 11:39:46  
11 requirements, and quite a number of the actual 11:39:50  
12 decisions are made at the school district level. 11:39:54  
13 Q. And at the national level -- are you saying that at 11:40:02  
14 the national level there are implications for what 11:40:04  
15 goes on in education inside the State of Minnesota? 11:40:06  
16 A. Yes, I'm saying there can be. 11:40:08  
17 Q. And do you know of any national requirements that 11:40:12  
18 take place in the State of Minnesota that have to do 11:40:16  
19 with education about smoking? 11:40:16  
20 MS. WALBURN: Objection; form. 11:40:18  
21 THE WITNESS: I don't know this very well, 11:40:26  
22 but there's monies allocated from the national 11:40:32  
23 level, safe and drug free schools' monies that are 11:40:36  
24 allocated to the states who allocate them to the 11:40:40  
25 school districts, so that would be an example. 11:40:46

1 BY MS. JOHNSON:

2 Q. Can you think of any other examples? 11:40:50

3 A. Not off the top of my head. 11:40:54

4 Q. Would the American Lung Association be a national 11:41:00

5 group that would have impact in the State of 11:41:04

6 Minnesota?

7 MS. WALBURN: Objection; form. 11:41:06

8 THE WITNESS: The American Lung 11:41:10

9 Association of Minnesota should have impact in 11:41:16

10 Minnesota. And I'm not quite sure at this point how 11:41:22

11 the national level American Lung Association 11:41:24

12 interacts with the local level. 11:41:28

13 BY MS. JOHNSON:

14 Q. And would that also be true for the Minnesota 11:41:30

15 division of the American Cancer Society? 11:41:32

16 MS. WALBURN: Objection; form. 11:41:34

17 THE WITNESS: Are you asking does the 11:41:40

18 American Cancer -- the national level American 11:41:44

19 Cancer Society have an impact on the State of 11:41:46

20 Minnesota versus the Minnesota level American Cancer 11:41:52

21 Society? 11:41:52

22 BY MS. JOHNSON:

23 Q. Let's take them one at a time. What about the 11:41:54

24 national American Cancer Society, does it have an 11:41:56

25 impact within the State of Minnesota? 11:41:58

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1 MS. WALBURN: Objection. What do you mean 11:42:00

2 by "impact"? 11:42:00

3 THE WITNESS: That's a good point. What 11:42:08  
4 do you mean by "impact"? 11:42:08  
5 BY MS. JOHNSON:  
6 Q. The same thing I meant in the last three questions 11:42:12  
7 where you and I have had a conversation about impact 11:42:14  
8 in the State of Minnesota. I'm using that same 11:42:18  
9 definition that we were using before. 11:42:18  
10 A. It's probably good for me to define what I mean by 11:42:22  
11 impact, which is sort of allocation of their 11:42:26  
12 resources. In their case, it's mostly people as 11:42:30  
13 opposed to money, I believe. 11:42:32  
14 I'm not an expert on that, American Cancer 11:42:36  
15 Society. And my understanding would be that the 11:42:42  
16 Minnesota American Cancer Society would have more, 11:42:46  
17 would have more impact on the State of Minnesota, 11:42:50  
18 but there's some relationship with national level 11:42:54  
19 that, you know, I don't know about right now. 11:42:58  
20 Q. Is there a Minnesota division of the American Heart 11:43:02  
21 Association?  
22 A. There is a Minnesota division. 11:43:06  
23 Q. And what can you tell me about that? 11:43:08  
24 A. I can't tell you much at the moment. I know that 11:43:14  
25 there's a children's heart health initiative or 11:43:18

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1 heart health committee that I think is on my 11:43:24  
2 C.V. I'm on it, but I never go to the meetings. 11:43:28  
3 And they had a conference on children's 11:43:30  
4 heart health last year. They sponsor things on 11:43:38  
5 heart health within the State of Minnesota. And I'm 11:43:40

6	sure that they somehow communicate with the national	11:43:42
7	level.	11:43:44
8	Q. Can you think of any other groups within the State	11:43:48
9	of Minnesota that play a role in the health and	11:43:52
10	education of young people?	11:43:52
11	MS. WALBURN: Objection; form.	11:43:54
12	THE WITNESS: What do you mean by groups?	11:44:00
13	There's lots of groups.	11:44:06
14	BY MS. JOHNSON:	
15	Q. Can you name some groups?	11:44:10
16	A. I want --	11:44:10
17	MS. WALBURN: Objection; form.	11:44:12
18	THE WITNESS: What do you mean by	11:44:14
19	"groups"?	11:44:16
20	BY MS. JOHNSON:	
21	Q. I mean the same thing that we've been discussing for	11:44:22
22	the last ten minutes, groups like the Minnesota Lung	11:44:24
23	Association, groups like the Minnesota version of	11:44:28
24	the American Cancer Society, other groups that are	11:44:32
25	organized for a purpose and who are responsible or	11:44:40

8 Minnesotans. 11:45:06

9 BY MS. JOHNSON:

10 Q. And that's at the state level. You also mentioned 11:45:10

11 participation of these groups at the school district 11:45:14

12 level. What do you mean by that? 11:45:14

13 MS. WALBURN: Objection; misstates 11:45:16

14 testimony. 11:45:18

15 THE WITNESS: I don't believe I said that 11:45:20

16 these -- I said that the safe and drug free schools 11:45:24

17 act provided money to the states, and the states 11:45:30

18 then provided money to the school districts. 11:45:34

19 I don't believe I said any of these 11:45:34

20 voluntary health organizations provided money to 11:45:44

21 schools, but they may have. They may have. I 11:45:50

22 didn't say that, but they may have. 11:45:52

23 BY MS. JOHNSON:

24 Q. Is it possible they provide support in a form other 11:45:56

25 than money? 11:45:56

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1 MS. WALBURN: Objection; calls for 11:45:58

2 speculation, form. 11:45:58

3 THE WITNESS: The American Heart 11:46:06

4 Association, the American Cancer Society, American 11:46:10

5 Lung Association could provide other kinds of 11:46:16

6 resources besides money. 11:46:16

7 BY MS. JOHNSON:

8 Q. And what other kinds of resources might that be? 11:46:20

9 MS. WALBURN: Objection; form, calls for 11:46:22

10 speculation. 11:46:22

11 THE WITNESS: I don't really know. 11:46:30  
12 BY MS. JOHNSON:  
13 Q. So other than money, you don't know of any way the 11:46:36  
14 American Lung Association might assist in the 11:46:40  
15 education or the education of young people? 11:46:42  
16 MS. WALBURN: Objection; asked and 11:46:44  
17 answered, form. 11:46:46  
18 THE WITNESS: The American Lung 11:46:52  
19 Association, the American Cancer Society, the 11:46:56  
20 American Heart Association have programs. They're 11:47:02  
21 called programs. I don't think they're at the state 11:47:06  
22 level, but they might be. And they could be 11:47:08  
23 distributed by the state to schools. 11:47:12  
24 BY MS. JOHNSON:  
25 Q. When you say programs, what do you mean by 11:47:16

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1 programs? 11:47:16  
2 A. I should have said instead of programs "materials." 11:47:22  
3 Q. Materials. What do you mean by materials, film 11:47:28  
4 strips or -- 11:47:30  
5 A. What I mean by materials are any range of things 11:47:34  
6 from booklets to film strips to actual curricula. 11:47:44  
7 And as far as I know, none of them have been 11:47:48  
8 effective. 11:47:48  
9 Q. When you say none of them have been effective, what 11:48:06  
10 do you mean? 11:48:08  
11 A. What I mean is that they haven't been evaluated and 11:48:16  
12 shown in the scientific literature to have had an 11:48:20

13 impact on children's health behaviors. 11:48:22  
14 Q. What kinds of health behaviors are you referring 11:48:26  
15 to? 11:48:26  
16 A. For which agency? 11:48:32  
17 Q. Let's pick the American Heart Association. 11:48:36  
18 A. Okay. Their new curricula, their old curricula, 11:48:46  
19 which I can't remember the names of, Heart Smart or 11:48:50  
20 something like that, I can't even really remember 11:48:54  
21 the name of it, hasn't been shown to have any impact 11:48:58  
22 on children's eating habits, physical activity, 11:49:04  
23 cigarette smoking. 11:49:04  
24 Q. You're saying they haven't been shown to be 11:49:12  
25 effective in getting kids to cut back on cigarette 11:49:14

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1 smoking? 11:49:16  
2 A. To not start smoking -- 11:49:18  
3 Q. To not start smoking? 11:49:20  
4 A. -- to quit smoking. 11:49:20  
5 Q. And what about the safe and drug free school 11:49:24  
6 materials, have they been shown to be effective in 11:49:28  
7 getting kids to cut back on smoking or not start? 11:49:32  
8 A. That's a whole different ball game. 11:49:36  
9 Q. Okay. 11:49:36  
10 A. The safe and drug free schools, from my 11:49:42  
11 understanding of it, is an act, and it provides 11:49:46  
12 monies to two states to give to schools to do drug 11:49:56  
13 education, which may include tobacco, alcohol and 11:50:00  
14 other drugs. And this is my understanding of it. I 11:50:02  
15 haven't actually read the act. 11:50:04

16                   The school district then -- it isn't a set       11:50:12  
17       program.   The school district picks the program.       11:50:16  
18   Q.   What other groups in Minnesota have materials like       11:50:28  
19       the American Heart Association?                       11:50:30  
20                   MS. WALBURN:   Objection; form.           11:50:34  
21                   THE WITNESS:   None of them have           11:50:44  
22       materials.   I don't know, actually.   I believe the       11:50:56  
23       American Lung Association has a quit smoking program   11:51:00  
24       for adolescents.   And in terms of other programs,       11:51:10  
25       they may -- I haven't looked.   I used to know those,   11:51:14

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1       but I don't know what they have right now.           11:51:16  
2   BY MS. JOHNSON:  
3   Q.   What about the American Cancer Society?           11:51:20  
4                   MS. WALBURN:   Objection; form.           11:51:20  
5                   THE WITNESS:   As I said, I don't know       11:51:26  
6       really what they have right now.                       11:51:28  
7   BY MS. JOHNSON:  
8   Q.   Do you know what they've had before?           11:51:30  
9   A.   I know that in the early '80s they attempted a quit   11:51:36  
10       smoking program with adolescents.                   11:51:38  
11   Q.   You were a member of the American Cancer Society   11:51:42  
12       Advisory Council On Youth Programs 1983 and 1984; is   11:51:48  
13       that right?  
14   A.   Uh-hm.   11:51:48  
15   Q.   And did that advisory council on youth programs       11:51:52  
16       include smoking?                                       11:51:58  
17                   MS. WALBURN:   Objection; form.           11:52:00



18 THE WITNESS: The topic of the advisory 11:52:04  
19 council on youth was on youth programs. I'm sure we 11:52:08  
20 discussed smoking. 11:52:08  
21 BY MS. JOHNSON:  
22 Q. Okay. Does the federal government play a role in 11:52:14  
23 protecting and overseeing the health and welfare of 11:52:18  
24 young people? 11:52:18  
25 A. Yes, I think the federal government plays a role in 11:52:26

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1 overseeing health and welfare of young people. 11:52:28  
2 Q. What role do you see that it plays? 11:52:30  
3 A. Well, the federal government, as a government body, 11:52:38  
4 is, I think, again, responsible for policy making, 11:52:42  
5 predicting and protection. 11:52:44  
6 Q. And would that include policies about adolescent 11:52:56  
7 smoking? 11:52:56  
8 A. It could include policies around adolescent 11:53:06  
9 smoking. 11:53:06  
10 Q. But you don't know whether it does include policies 11:53:08  
11 about adolescent smoking? 11:53:10  
12 MS. WALBURN: Objection; form. 11:53:10  
13 THE WITNESS: I'm not sure if the -- yes, 11:53:16  
14 I believe a policy to not sell to under 18 is now a 11:53:22  
15 national policy that links monies, those monies from 11:53:28  
16 safe and drug free schools. So it doesn't force 11:53:32  
17 states to comply, but it does set up an incentive. 11:53:40  
18 BY MS. JOHNSON:  
19 Q. What about community leaders? Do they play a role 11:53:46  
20 in protecting and overseeing the health and welfare 11:53:48

21 of young people? 11:53:48  
22 A. I'm not sure who community leaders are. Could you 11:53:56  
23 define who you think they are or who you're talking 11:54:00  
24 about? 11:54:00  
25 Q. Have you ever written about community leaders? 11:54:04

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1 A. I have written about community leaders. 11:54:06  
2 Q. And when you wrote about community leaders, who were 11:54:10  
3 you referring to? 11:54:10  
4 A. Do you have a particular paper you're referring to? 11:54:14  
5 Q. No, pick any one. 11:54:16  
6 MS. WALBURN: Objection; form. 11:54:18  
7 THE WITNESS: Okay. I'm thinking about 11:54:24  
8 Project Northland, our current project in northern 11:54:32  
9 Minnesota, and we selected people who we thought 11:54:36  
10 represented different sectors of the community as 11:54:42  
11 community leaders. 11:54:44  
12 BY MS. JOHNSON:  
13 Q. Can you describe to me who -- 11:54:50  
14 A. We picked people who represented government, like 11:54:58  
15 the mayor, the head of the police department, 11:55:04  
16 someone who represented business, someone who 11:55:06  
17 represented the schools, people who represented the 11:55:14  
18 newspaper. 11:55:14  
19 Q. Anyone else represented? 11:55:16  
20 A. I think so, but I can't remember. 11:55:18  
21 Q. Anyone from the church community? 11:55:22  
22 A. Not in this particular survey. I don't remember 11:55:32

23           them. But they might have been, but I don't           11:55:34  
24           remember them.           11:55:36  
25   Q.   Now, in other surveys, have you included           11:55:38

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1           representatives from the church community as a           11:55:42  
2           community leader?           11:55:42  
3   A.   I don't remember, actually.           11:55:46  
4   Q.   Thinking about all of the times you've referred to           11:55:54  
5           community leaders, do any other types of individuals           11:55:56  
6           come to mind as community leaders who play a role in           11:56:00  
7           protecting and overseeing the health and welfare of           11:56:04  
8           young people?           11:56:04  
9   A.   Did I say business leaders?           11:56:14  
10   Q.   Yes. I'm thinking you haven't mentioned anyone with           11:56:18  
11           any kind of medical background.           11:56:20  
12   A.   I don't think we included them in community           11:56:26  
13           leaders. Oh, maybe -- not in Project Northland we           11:56:32  
14           didn't.           11:56:34  
15   Q.   Any other project that you can think of?           11:56:36  
16   A.   We included community leaders in the Minnesota Heart           11:56:42  
17           Health Program, but I wasn't responsible for that           11:56:44  
18           part of it, so I didn't pick those leaders. I           11:56:52  
19           didn't pick them because they were leaders for youth           11:56:54  
20           education, for example.           11:56:56  
21   Q.   Do you think that family physicians also play a role           11:57:06  
22           in protecting and overseeing the health and welfare           11:57:06  
23           of young people?           11:57:08  
24   A.   I think family physicians could play a role in the           11:57:12  
25           health and welfare of children, yeah, they could.           11:57:16

1 Q. Do you think that the medical community generally 11:57:20  
2 plays a role in protecting and overseeing the health 11:57:24  
3 and welfare of young people? 11:57:24  
4 A. I think the medical community, yeah, plays some role 11:57:34  
5 in that, yes. 11:57:34  
6 Q. And the public health community, as well, does the 11:57:38  
7 public health community play a role in protecting 11:57:40  
8 and overseeing the health and welfare of young 11:57:46  
9 people? 11:57:46  
10 A. Yeah, the public health community plays some role in 11:57:50  
11 that, yes. 11:57:50  
12 Q. Okay. Twelve years after the Surgeon General's 11:57:52  
13 first report on smoking and health you enter 11:57:54  
14 Stanford University, Ph.D. program; is that 11:57:58  
15 correct?  
16 A. Yes. 11:57:58  
17 Q. And what did you get your Ph.D. in? 11:58:00  
18 A. In education. 11:58:04  
19 Q. And let me ask you: Where do adolescents usually 11:58:10  
20 get their information about health issues from? 11:58:14  
21 A. You mean any health issue or particular? 11:58:30  
22 Q. Personal health. 11:58:30  
23 A. Like hygiene? 11:58:34  
24 Q. Let's take hygiene. Where do adolescents get their 11:58:38  
25 information about health issues such as hygiene? 11:58:40

1 A. I think they'd learn about hygiene from schools, 11:58:52  
2 general community norms, about what's clean or not 11:58:58  
3 clean and, of course, their families. And so that 11:59:02  
4 they're given -- people are given pretty indirect 11:59:06  
5 messages about hygiene, also. 11:59:10  
6 Q. And would you say that adolescents get their 11:59:12  
7 information about smoking from those same sources? 11:59:14  
8 A. No. 11:59:16  
9 Q. What sources do they get their information from? 11:59:18  
10 A. Well, they get quite a bit of information from 11:59:22  
11 tobacco advertising promotion. They get information 11:59:26  
12 from that. They get information from their peers. 11:59:38  
13 They get information from the media. 11:59:40  
14 Q. Any other sources? 11:59:42  
15 A. You mean in addition to what I named before? 11:59:50  
16 Q. Well, you said the other ones didn't count. 11:59:54  
17 MS. WALBURN: Objection; misstates 11:59:54  
18 testimony. 11:59:54  
19 THE WITNESS: I didn't say those others 11:59:58  
20 didn't count. You said were there any, I believe 12:00:02  
21 you said were there any other or is that all. You 12:00:06  
22 said is it the same for smoking, and I said no. 12:00:12  
23 Which I shouldn't have said no. I should 12:00:16  
24 said have said, no, that's not it entirely. 12:00:18  
25 BY MS. JOHNSON:

1 Q. So let me see if I understand. Adolescents get 12:00:22

2	information about health issues related to smoking	12:00:26
3	also from schools?	12:00:28
4	A. Yes.	12:00:30
5	Q. And general community norms?	12:00:34
6	A. Yes.	12:00:34
7	Q. And families?	12:00:36
8	A. And tobacco advertising and promotions.	12:00:38
9	Q. And families?	12:00:40
10	A. And families.	12:00:42
11	Q. Okay. Now, your Ph.D. was in --	12:00:46
12	A. I'd like to clarify that. Not all adolescents will	12:00:50
13	get information from all those sources. But the --	12:00:56
14	but adolescents in general will receive information	12:00:58
15	about smoking from those sources.	12:01:02
16	Q. Can you think of any other sources?	12:01:06
17	MS. WALBURN: Objection; form.	12:01:08
18	THE WITNESS: Did you include in that list	12:01:20
19	mass media, T.V., and movies?	12:01:26
20	BY MS. JOHNSON:	
21	Q. Do you believe that any adolescent only gets	12:01:36
22	information about tobacco issues from tobacco	12:01:40
23	industry advertisements?	12:01:42
24	A. Can you restate that? Can you state that again?	12:01:46
25	MS. JOHNSON: You can read it back.	
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1	(The requested portion read back.)	12:01:48
2	THE WITNESS: I believe virtually every	12:02:04
3	adolescent gets information from tobacco industry	12:02:06

4 advertising and promotions. 12:02:10

5 BY MS. JOHNSON:

6 Q. Okay. Let me ask the question again: Do you 12:02:12

7 believe that there is any adolescent for whom that 12:02:16

8 is the sole source of information about tobacco? 12:02:22

9 A. I can't speculate on that. 12:02:24

10 Q. Do you have an opinion? 12:02:26

11 A. I can't speculate on that. 12:02:30

12 Q. Do you know of any scientific research study that 12:02:32

13 has demonstrated that any adolescent has received 12:02:40

14 information about the risks of smoking from only one 12:02:44

15 source, tobacco industry advertisements? 12:02:48

16 MS. WALBURN: Objection; form, asked and 12:02:50

17 answered. 12:02:50

18 THE WITNESS: I think I answered that. 12:02:54

19 BY MS. JOHNSON:

20 Q. Could you answer it again. 12:02:56

21 MS. WALBURN: Objection; asked and 12:02:58

22 answered. 12:02:58

23 THE WITNESS: Yeah, I answered it 12:03:00

24 already. 12:03:00

25 BY MS. JOHNSON:

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1 Q. Do you personally know any adolescent whose only 12:03:14

2 learning about smoking has come from tobacco 12:03:16

3 industry advertisements? 12:03:18

4 A. I don't know any adolescent who has or hasn't 12:03:38

5 learned all their information only from tobacco 12:03:40

6 industry sources. 12:03:42

7 MS. JOHNSON: Could you repeat that 12:03:46

8 answer. 12:03:46

9 (The requested portion read back.) 12:03:48

10 BY MS. JOHNSON:

11 Q. Let me ask my question again: As you sit here 12:04:00

12 today, do you know of any adolescent whose only 12:04:04

13 learning about smoking has come from tobacco 12:04:12

14 industry ads? 12:04:14

15 A. I don't know any adolescent whose only source of 12:04:24

16 information has come from the tobacco industry. 12:04:26

17 Q. Okay. What courses did you take in getting your 12:04:32

18 Ph.D. in education? 12:04:34

19 A. I took courses in educational curriculum theory, in 12:04:44

20 behavioral psychology. I took lots of courses in 12:04:50

21 statistics and in evaluation design. 12:04:58

22 My minor was in adolescence, so I took a 12:05:04

23 distributed minor which meant I took courses on 12:05:06

24 adolescence in sociology and anthropology, in 12:05:10

25 medicine and in mass communications. That's about 12:05:24

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1 what I can remember of my course work back then. 12:05:26

2 Q. And at Stanford, you were first a research assistant 12:05:34

3 and then research associate and director. Do I have 12:05:36

4 that right? 12:05:38

5 A. Yes. 12:05:38

6 Q. In the youth health promotion research, which was 12:05:38

7 part of the Stanford Heart Disease Prevention 12:05:42

8 Program; is that right? 12:05:42



9 A. Yes, that's right. 12:05:44

10 Q. Did you know Dr. Steve Chaffee? 12:05:48

11 A. I didn't know him. I may have met him, but I don't 12:05:52

12 know him, no. 12:05:52

13 Q. At this time, when you were involved in the youth 12:05:58

14 health prevention program, can you identify for me 12:06:02

15 what were considered to be the primary threats to 12:06:06

16 youth health? 12:06:08

17 A. No, I really can't at that point. I mean, that's 12:06:22

18 not really what I was studying at that point. 12:06:26

19 Q. Did the youth health prevention program have a 12:06:32

20 focus? 12:06:34

21 A. The youth health promotion program was attached to 12:06:38

22 the Minnesota Heart Health Program, I mean the 12:06:42

23 Stanford Heart Disease Prevention Program, so its 12:06:44

24 focus was heart health, which doesn't include all of 12:06:50

25 health. 12:06:50

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1 Q. And what were the primary threats to youth heart 12:06:54

2 health? 12:06:54

3 A. The primary threats at that point were seen as 12:07:02

4 cigarette smoking, dietary factors and physical 12:07:10

5 activity. 12:07:10

6 Q. Anything else? 12:07:12

7 A. The Stanford program also focused on stress, but 12:07:18

8 they really didn't have much research about children 12:07:20

9 and stress, so that wasn't part of it. 12:07:26

10 Q. What about alcohol use? 12:07:28

11 A. That came not as part of the Stanford Heart Disease 12:07:34

12 Prevention Program, but as another project that I 12:07:40  
13 worked on during my time at Stanford. 12:07:42  
14 Q. Could you say that again? What was that? 12:07:46  
15 A. There was another research project, the Harvard 12:07:48  
16 Stanford Research Project, that was funded that 12:07:54  
17 really wasn't part of the heart disease prevention 12:07:56  
18 program, but which I was working with on. 12:08:02  
19 It was a little bit of an overlap of 12:08:02  
20 grants. And as part of that grant, we did talk 12:08:06  
21 about alcohol and marijuana use. 12:08:08  
22 Q. And was that another youth health program? 12:08:10  
23 A. It was a youth health program. 12:08:14  
24 Q. And was it focused on heart health or general 12:08:16  
25 health? 12:08:16

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1 A. It was focused on tobacco, alcohol and marijuana 12:08:22  
2 use. 12:08:22  
3 Q. Just tobacco, alcohol and marijuana? 12:08:28  
4 A. Yes. 12:08:30  
5 Q. No other drugs? 12:08:30  
6 A. I can't remember whether we said anywhere other 12:08:38  
7 drugs. I can't remember that. I know those three 12:08:44  
8 were included. 12:08:44  
9 Q. What were your views about the health consequences 12:08:50  
10 of smoking while you were at Stanford, beginning in 12:08:54  
11 1976 through 1980? 12:08:56  
12 A. I felt that smoking caused premature death. 12:09:04  
13 Q. Anything else? 12:09:08

14	A.	On health consequences?	12:09:12
15	Q.	Yes.	12:09:12
16	A.	I probably also thought it caused, I think, that it	12:09:22
17		caused illness, disability and death.	12:09:24
18	Q.	Heart disease?	12:09:26
19	A.	That is a disability.	12:09:30
20	Q.	Would lung cancer be a disability, as well, under	12:09:34
21		your --	12:09:34
22	A.	Lung cancer would be a disability and which usually	12:09:38
23		results in death.	12:09:38
24	Q.	Can you list for me the disabilities that you	12:09:40
25		associate cigarette smoking with, in addition to	12:09:44

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1		heart disease and lung cancer?	12:09:46
2		MS. WALBURN: At what period of time?	12:09:46
3	BY MS. JOHNSON:		
4	Q.	Same period of time.	12:09:48
5	A.	1976 to 1980. I don't remember thinking of -- I	12:10:12
6		remember thinking cancer generally, but I'm not sure	12:10:14
7		which specific cancer emerged in my mind at what	12:10:18
8		time.	12:10:18
9	Q.	In your youth health prevention programs focusing on	12:10:26
10		heart health, you listed four things that you were	12:10:30
11		concerned about, cigarette smoking, dietary	12:10:34
12		concerns, physical activity, and maybe at Stanford	12:10:40
13		stress.	12:10:42
14		Did you find it difficult to convince	12:10:44
15		participants in the program to change their dietary	12:10:48
16		approach to life?	12:10:56

17 A. Yes. I think that at that time, 1976 to 1980, there 12:11:10  
18 hadn't been very many successful behavior change 12:11:12  
19 programs around anything. 12:11:12  
20 Q. And did you find that it was also difficult to 12:11:16  
21 convince people to change their level of physical 12:11:20  
22 activity? 12:11:20  
23 A. You mean children? 12:11:22  
24 Q. Right. 12:11:24  
25 A. Well, it's a little difficult to really answer this 12:11:38

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1 in terms of difficulty. It's difficult for people 12:11:44  
2 to change their behaviors. 12:11:50  
3 And children -- it's easier for children 12:11:54  
4 to change their behaviors in some areas than 12:11:56  
5 adults. And yet we were successful. So, you know, 12:12:08  
6 in general I'd say that children were very receptive 12:12:12  
7 to changing their eating habits and physical 12:12:14  
8 activity habits, but that the behavior change 12:12:18  
9 process isn't that easy. 12:12:20  
10 Q. Did you observe that participants in the program had 12:12:22  
11 difficulty giving up cigarette smoking? 12:12:26  
12 A. Well, at that point I was working on primary 12:12:32  
13 prevention, which is trying to work with kids before 12:12:38  
14 they start smoking, and we tried to get them not to 12:12:42  
15 start. 12:12:42  
16 Q. And what is one of the reasons why you would try to 12:12:46  
17 get them not to start? 12:12:46  
18 A. Because of the lack of success at getting people to 12:12:52

19 quit smoking. 12:12:54  
20 Q. And was that difficulty in getting people to quit 12:12:58  
21 smoking among the things that you associated with 12:13:02  
22 smoking in this period of time, in addition to the 12:13:08  
23 heart disease and cancer? 12:13:10  
24 A. Yeah, I think that's -- well, I wouldn't call it -- 12:13:14  
25 at that point, yeah, getting -- yeah, it would be 12:13:18

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1 part of that, yeah. 12:13:18  
2 Q. And you completed your Ph.D. in 1980? 12:13:30  
3 A. I did. 12:13:30  
4 Q. And you moved to Minnesota? 12:13:36  
5 A. (Witness nods head.) 12:13:38  
6 Q. How did you select the University of Minnesota? 12:13:40  
7 A. Well, the University of Minnesota selected me. I 12:13:52  
8 guess I wanted to be a faculty person at that 12:13:56  
9 point. I was looking for an academic career. 12:13:58  
10 The Minnesota Heart Health Program had 12:14:02  
11 just been funded and they wanted someone to do youth 12:14:08  
12 health promotion research. And they recruited me 12:14:16  
13 and so I came and interviewed. I had another 12:14:20  
14 choice, and I picked Minnesota. 12:14:22  
15 Q. What was your other choice? 12:14:24  
16 A. The Oregon Research Institute in Eugene. 12:14:30  
17 Q. In your field, does the University of Minnesota rank 12:14:36  
18 high, low, what is its reputation in public health? 12:14:42  
19 A. In epidemiology, which is what I'm in, we just had a 12:14:46  
20 review of our program this past quarter and we were 12:14:52  
21 top ranked. 12:14:54

22 Q. What does that mean? 12:14:56  
23 A. The reviewer said we were a premier department, 12:15:06  
24 leading department in the world. 12:15:06  
25 Q. In the world? 12:15:08

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1 A. In our areas. 12:15:08  
2 Q. And what are the areas that you were a leading 12:15:12  
3 department in the world on? 12:15:14  
4 A. Cardiovascular, epidemiology, nutritional 12:15:16  
5 epidemiology, behavioral epidemiology, and to a 12:15:20  
6 lesser extent infectious disease epidemiology and 12:15:26  
7 cancer epidemiology. 12:15:28  
8 Q. And are these divisions or how would you 12:15:32  
9 characterize these, as areas? 12:15:34  
10 A. Oh, no, they're just research concentrations which 12:15:40  
11 overlap. They're not people -- people aren't locked 12:15:44  
12 into those. The department is epidemiology. 12:15:46  
13 Q. And the department sits over these areas that you 12:15:50  
14 described? 12:15:52  
15 A. The department is a forum for us to do our research 12:15:56  
16 as a place where we do our research. And in a way, 12:16:00  
17 those are also areas we would teach in. 12:16:04  
18 Q. So did the university get ranked or did they 12:16:10  
19 actually rank your division? 12:16:12  
20 A. They actually ranked our division. 12:16:14  
21 Q. And you would agree with me, wouldn't you, that your 12:16:18  
22 division covers smoking behavior? 12:16:22  
23 A. Our division does look at the epidemiology of 12:16:26

24	smoking.	12:16:28
25	Q. Do you know who Leonard Schuman is?	12:16:34
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1	A. I do know Leonard Schuman.	12:16:36
2	Q. How do you know him?	12:16:38
3	A. Well, he was the head of epidemiology prior to or I	12:16:48
4	guess when I first came to Minnesota. He's retired	12:17:00
5	now.	12:17:00
6	Q. In your opinion, has the quality of the division of	12:17:04
7	epidemiology been the same throughout the period	12:17:06
8	that you've been there?	12:17:08
9	A. The quality of the research in our department has	12:17:14
10	always been excellent, and our teaching, I think,	12:17:18
11	has improved significantly over the course of the 17	12:17:22
12	years.	12:17:22
13	Q. Does the university work with any state agencies?	12:17:36
14	Does the -- what I'm getting at, does the university	12:17:40
15	interface with anything else going on in the State	12:17:42
16	of Minnesota?	
17	MS. WALBURN: Objection; form.	12:17:44
18	THE WITNESS: The university is a big	12:17:48
19	place. Do you want -- could you be more specific?	12:17:54
20	I couldn't answer for the whole university.	12:17:56
21	BY MS. JOHNSON:	
22	Q. Okay. Let's take the division of epidemiology	12:18:00
23	within the University of Minnesota. Does the	12:18:04
24	division of epidemiology work with other health	12:18:08
25	officials in the state or do you just strictly stay	12:18:10

1           within the four walls of your university?           12:18:14

2   A.   We work with just about everybody in the state, I       12:18:22

3           would say.           12:18:22

4   Q.   Can you list for me some of the groups you work       12:18:26

5           with?           12:18:26

6   A.   Me personally?           12:18:30

7   Q.   You personally and then we'll go to your division,     12:18:32

8           you personally start with.           12:18:34

9   A.   I've worked with Minnesota Department of Health.     12:18:40

10           I've worked with the Minnesota Department of       12:18:42

11           Education, which is now Children, Youth and       12:18:48

12           Families, and doing a little bit with them. I think   12:18:56

13           that's it for me.           12:18:56

14   Q.   Department of Health, department of education and     12:19:00

15           the Children, Youth and Families is a rename of the   12:19:02

16           Department of Education?           12:19:04

17   A.   Right.           12:19:06

18   Q.   And we're widely looking at your division of       12:19:12

19           epidemiology, what would you add to this list?     12:19:16

20   A.   In terms of collaborations?           12:19:22

21   Q.   In terms of contact on professional topics.           12:19:26

22                   MS. WALBURN: Objection; form.           12:19:28

23                   THE WITNESS: Well, that's a different       12:19:32

24           whole thing. We might talk professionally to       12:19:34

25           anybody in the state.           12:19:38



1 BY MS. JOHNSON:

2 Q. So let's go back to you then. When you were listing 12:19:40

3 the Department of Health and Department of 12:19:42

4 Education, you meant actually formally work and 12:19:46

5 collaborate with? 12:19:48

6 A. Yes. 12:19:48

7 Q. On an informal basis, is this list longer? 12:19:50

8 A. Not much for me. 12:19:54

9 Q. Who else would you add to the list? 12:19:58

10 A. I can't think of anybody. There may be others, but 12:20:02

11 I can't really think of anyone. If you could name 12:20:06

12 some other agencies, I might think through it. But 12:20:10

13 I think that pretty well covers the state agencies 12:20:18

14 that I've worked with. 12:20:24

15 Q. What other agencies are there that you've worked 12:20:26

16 with? 12:20:26

17 A. You mean outside the State of Minnesota? 12:20:26

18 Q. Are there any others within the State of Minnesota? 12:20:26

19 A. Not that I know of. 12:20:28

20 Q. So you're referring to what? 12:20:30

21 A. No, I was wanting you to tell me if there are any 12:20:32

22 other agencies so that it would prompt my memory if 12:20:36

23 I had had a conversation with them. 12:20:38

24 Q. Now more broadly your division, obviously your 12:20:44

25 division would deal with these two that you mention 12:20:48

1 that you deal with. 12:20:50

2 What additional agencies would others 12:20:52

3	within your division deal with?	12:20:54
4	MS. WALBURN: Objection; form, compound	12:20:56
5	question.	12:20:56
6	THE WITNESS: I don't really know. If you	12:20:58
7	ask me an agency, I might be able to remember. You	12:21:04
8	know, there are -- I think we have 300 in our	12:21:08
9	department right now. So I can't answer for all of	12:21:10
10	them. I really don't know.	12:21:14
11	BY MS. JOHNSON:	
12	Q. When you said a minute ago the list would be longer	12:21:18
13	for your division, you still believe it would be	12:21:20
14	longer, you just can't name with any particularity	12:21:22
15	the other agencies?	12:21:24
16	A. That would be right.	12:21:24
17	Q. It would be fair to say that if it's an agency in	12:21:28
18	the State of Minnesota that deals with	12:21:32
19	cardiovascular, nutrition, behavioral, epidemiology	12:21:36
20	and cancer that someone in your division is going to	12:21:40
21	have access to someone in those agencies?	12:21:42
22	MS. WALBURN: Objection; calls for	12:21:44
23	speculation.	12:21:44
24	THE WITNESS: I don't know. I mean, I	12:21:46
25	don't want to say -- I mean --	12:21:50

1 BY MS. JOHNSON:

2 Q. Are you restricted as a professor as to who you 12:21:52  
3 could contact within the State of Minnesota about 12:21:54  
4 professional topics that are a part of the division 12:22:00

5 of epidemiology? 12:22:00

6 A. No, I'm not restricted in terms of talking to 12:22:06

7 anyone. 12:22:06

8 Q. And you are personally free to contact any Minnesota 12:22:10

9 employee? 12:22:10

10 A. I think I'm free to do that, yes. 12:22:16

11 Q. And others within your division of epidemiology are, 12:22:20

12 likewise, free? 12:22:20

13 A. The faculty should be free to do that. 12:22:24

14 Q. Were you interested in youth issues when you first 12:22:34

15 came to the University of Minnesota? 12:22:36

16 A. Yes, that's -- that is my area of expertise. 12:22:42

17 Q. And can you identify the primary threats to youth 12:22:44

18 health that you faced when you came to the 12:22:48

19 University of Minnesota in 1980? 12:22:48

20 A. I can't list them in terms of any accuracy. That 12:23:06

21 isn't -- I didn't really study that in terms of what 12:23:08

22 are all the threats. There might be things like 12:23:12

23 farm injuries in Minnesota that at that point I 12:23:16

24 wasn't interested in. 12:23:16

25 I came to Minnesota to work on the 12:23:20

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1 Minnesota Heart Health Program as a primary, as my 12:23:22

2 primary interest. 12:23:24

3 Q. And when you -- I'm sorry. 12:23:28

4 Was the Minnesota Heart Health Program 12:23:30

5 concerned with the same risk factors as the Stanford 12:23:34

6 Heart Health Program?

7 A. Yes. 12:23:36

8 Q. Or heart disease prevention program? 12:23:38  
9 A. It was concerned with the same, except we didn't 12:23:42  
10 focus on stress, and I forgot to mention we did 12:23:48  
11 focus on hypertension. 12:23:48  
12 Q. In the Stanford or in the -- 12:23:50  
13 A. Both. 12:23:52  
14 Q. In both? 12:23:52  
15 A. And I had forgot about hypertension. 12:23:54  
16 Q. So the Minnesota Heart Health Program is where you 12:24:00  
17 started when you came to Minnesota? 12:24:04  
18 A. That's right. It was my -- it was where I started 12:24:08  
19 in research when I came to Minnesota. 12:24:10  
20 Q. Were you involved in any other youth health 12:24:12  
21 programs, whether it's research or teaching at the 12:24:14  
22 University of Minnesota? 12:24:16  
23 A. When I first came or since then? 12:24:20  
24 Q. Well, let's start with when you first came. 12:24:22  
25 A. When I first came, that was the only research 12:24:28

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1 project I was funded on. I may have been finishing 12:24:32  
2 up some work from Stanford, and I was starting to 12:24:36  
3 help colleagues write other grants. 12:24:38  
4 Q. And did any of these grants have to do with 12:24:42  
5 smoking? 12:24:42  
6 A. Yes, two of the grants had to do with smoking. 12:24:46  
7 Q. And what were those two grants? 12:24:48  
8 A. Can I look at my C.V.? One was -- which began in 12:25:12  
9 1982 -- was a drug abuse prevention program. 12:25:16

10	Q.	What page of your C.V. are you looking at?	12:25:20
11	A.	Page 3.	12:25:22
12	Q.	Top of the page?	12:25:22
13	A.	Uh-hm.	12:25:24
14	Q.	National Institute on Drug Abuse?	12:25:26
15	A.	Uh-hm.	12:25:26
16	Q.	So you assisted someone writing a grant proposal for	12:25:30
17		this?	12:25:32
18	A.	Yes, I did.	12:25:32
19	Q.	Okay.	12:25:34
20	A.	And the same with the second one.	12:25:34
21	Q.	So in 1982, as you were doing this grant proposal,	12:25:40
22		"A developmental approach to drug abuse	12:25:42
23		prevention," did you consider cigarette smoking to	12:25:46
24		be a drug?	12:25:46
25	A.	Yes, I did.	12:25:48

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1	Q.	Let me just clarify. Is it fair to say that you	12:25:56
2		have never taken a puff off a cigarette in your	12:25:58
3		entire life?	12:26:00
4	A.	I took a puff.	12:26:00
5	Q.	When did you take a puff?	12:26:02
6	A.	1979.	12:26:02
7	Q.	What happened in 1979?	12:26:04
8	A.	I decided to take a puff because I was studying and	12:26:10
9		I thought I should see what it tastes like, so I	12:26:14
10		took a puff.	12:26:16
11	Q.	Do you recall the circumstances under which you took	12:26:24
12		the puff?	12:26:24

13 A. I was with friends. 12:26:24  
14 Q. Do you recall what brand you puffed? 12:26:28  
15 A. No, I don't. 12:26:28  
16 Q. Did you smoke the whole cigarette? 12:26:28  
17 A. No, I didn't smoke the whole cigarette. 12:26:30  
18 Q. Is it my understanding that your interest in youth 12:26:58  
19 health has, as a professional matter, focused 12:27:02  
20 primarily on health of heart as opposed to youth 12:27:08  
21 issues generally? 12:27:10  
22 A. No, I wouldn't say that's how it characterizes my 12:27:20  
23 career. I think my career, since I began focusing 12:27:22  
24 on health issues with children, it began with heart 12:27:28  
25 health, and then I think that it has expanded. 12:27:34

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1 Q. When did it -- I'm sorry. 12:27:36  
2 A. That's fine. 12:27:38  
3 Q. What has it expanded to include? 12:27:42  
4 A. Well, cancer prevention, and, obviously, alcohol use 12:27:52  
5 prevention, which is not part of heart health but is 12:27:56  
6 part of cancer prevention. 12:28:06  
7 I've been called on and written papers on 12:28:06  
8 youth more generally in my later -- now that I'm a 12:28:12  
9 mature academic. So I think I've been asked to 12:28:16  
10 write on that. 12:28:18  
11 And if I could -- I think all my grants, 12:28:20  
12 though, have to do with those areas. My grants 12:28:24  
13 represent my primary research. 12:28:26  
14 Q. What would you consider today to be the ten primary 12:28:34

15 threats to youth? 12:28:36  
16 MS. WALBURN: Objection; form. 12:28:40  
17 THE WITNESS: The ten primary threats to 12:28:44  
18 youth. In the short-term or in the long-term? 12:28:48  
19 BY MS. JOHNSON:  
20 Q. Let's take the short-term first. 12:28:50  
21 A. And what do you mean by "short-term"? 12:28:52  
22 Q. What do you mean by short-term? When you make a 12:28:54  
23 distinction short-term/long-term, what do you 12:28:56  
24 usually use as a dividing line? 12:28:58  
25 A. During adolescence. 12:29:02

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1 Q. And, roughly, what age would that be, zero to? 12:29:06  
2 A. Zero to adolescence. 12:29:08  
3 Q. Or what ages do you include? 12:29:10  
4 A. Pretty much the second decade of life. The 12:29:14  
5 definition of adolescence is a bit fluid, but let's 12:29:18  
6 think of the second decade of life as a definition 12:29:22  
7 of adolescence. 12:29:24  
8 So some health threats are apparent, more 12:29:30  
9 apparent, during adolescence and some health threats 12:29:34  
10 are more apparent later in life, but start in 12:29:38  
11 adolescence. 12:29:38  
12 Q. Okay. Can you start the list of the short-term? 12:29:42  
13 A. Well, cigarette smoking, you can put it on both 12:29:52  
14 lists if you'd like. 12:29:54  
15 Q. Is that because, one, smoking in the short-term 12:30:00  
16 continues into the long-term? 12:30:02  
17 A. And because it has health consequences during 12:30:06

18 adolescence. 12:30:06  
19 Q. And because it's addictive? 12:30:08  
20 A. Yes, it is an addictive product. But it also has 12:30:14  
21 health consequences during adolescence, itself. 12:30:24  
22 Alcohol use during the short-term. 12:30:26  
23 Q. Do I put that on the other list? 12:30:28  
24 A. No, I don't think so. Violence in the short-term. 12:30:48  
25 This is their own behaviors that I'm -- I should 12:30:56

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1 clarify that what I'm talking about are their own 12:30:58  
2 behaviors or behavior. 12:31:08  
3 Q. Any others? 12:31:10  
4 A. You want the top 10. Teenage pregnancy or 12:31:26  
5 pregnancy, I guess, they're teenagers. 12:31:30  
6 Okay, in the long-term. 12:31:34  
7 Q. Are those the only four that you can think of? 12:31:38  
8 A. Well, I'm trying to -- I only have ten to work 12:31:42  
9 with. 12:31:42  
10 Q. No, put ten in the short-term and ten in the 12:31:44  
11 long-term. 12:31:46  
12 A. This is going to take a while. Well, drug use for 12:32:02  
13 some adolescents, drug use, unsafe sex, drinking and 12:32:42  
14 driving. I think that's about it that I can think 12:32:56  
15 of for that list for right now. 12:32:58  
16 Q. Would you include riding without a seat belt? 12:33:02  
17 A. Sure. 12:33:06  
18 Q. And what about riding bikes without helmets? 12:33:12  
19 A. Sure. Those are really minor. 12:33:24



20 Q. Okay. Well, we got up to nine. Let's go ahead and 12:33:30  
21 go over to the long-term list. And you've already 12:33:32  
22 instructed me to put cigarette smoking on that side 12:33:36  
23 of the list, as well? 12:33:36  
24 A. These are behaviors adolescents engage in that have 12:33:40  
25 long-term potential health consequences, is that 12:33:42

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1 what we're -- am I clear on that? 12:33:46  
2 Q. Yes? 12:33:46  
3 MS. WALBURN: And when we're through with 12:33:48  
4 this list, I think it would be an appropriate time 12:33:52  
5 to break for lunch. 12:33:52  
6 THE WITNESS: Eating habits or eating 12:33:58  
7 patterns. 12:34:02  
8 BY MS. JOHNSON:  
9 Q. You mean like disorders or all? 12:34:04  
10 A. I mean specifically a high-fat diet. Perhaps you 12:34:10  
11 could put a question mark, high sodium diet. And 12:34:18  
12 you can put another question mark, sufficient fruits 12:34:24  
13 and vegetables. And the question mark is because 12:34:30  
14 the tracking data, those we assume -- we've shown 12:34:40  
15 that eating habits appear to track. 12:34:44  
16 Kids might eat, but if they eat a high-fat 12:34:48  
17 diet when they're kids, they might eat a high-fat 12:34:50  
18 diet later. We don't have that data for sodium, 12:34:58  
19 fruits and vegetables. 12:35:00  
20 Q. Okay. 12:35:00  
21 A. I think that's it that I know of. 12:35:02  
22 Q. You would not include drug use as having any 12:35:06

23 long-term effect on that child's probabilities of 12:35:10  
24 dropping out of school? 12:35:12  
25 A. Those are all short-term. After about age 25, 12:35:18

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1 there's not much long-term. I mean, it might be 12:35:24  
2 implicated by something else, but the drug use, 12:35:26  
3 itself, has short-term consequences, which, in turn, 12:35:32  
4 might have consequences, sure. 12:35:34  
5 Q. Just so I'm clear, when you're talking about people 12:35:38  
6 in their second decade of life, the first decade is 12:35:42  
7 0 to 10 and the second decade is 11 to what age? 12:35:48  
8 A. Let's say 11 to 19 or 10 to 20. Different 12:35:54  
9 adolescent specialists break it off at different 12:36:00  
10 times. 12:36:00  
11 Q. You just mentioned someone at 25, and I was thinking 12:36:02  
12 that might be the third decade? 12:36:04  
13 A. Right, that is the third decade. And the reason I 12:36:06  
14 picked 25 is that almost all these behaviors on the 12:36:12  
15 left-hand side aren't much of a problem past age 25 12:36:16  
16 in terms of health. 12:36:20  
17 Q. Looking at items 1 through 9 that we just went 12:36:28  
18 through, do you think that the most effective way of 12:36:36  
19 getting adolescents not to engage in this behavior 12:36:38  
20 is to give them information about the risks of the 12:36:42  
21 behavior? 12:36:42  
22 MS. WALBURN: Objection; form. 12:36:46  
23 THE WITNESS: I think that adolescents 12:36:54  
24 need to know about the risks concerning all those 12:37:00

25 behaviors. They need to know that information. 12:37:02

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1 BY MS. JOHNSON:

2 Q. Let me ask my question again: Do you think that the 12:37:06  
3 most effective way of controlling this behavior is 12:37:10  
4 through giving them information about these risks? 12:37:14

5 MS. WALBURN: Objection. What do you mean 12:37:16  
6 by "this behavior"? 12:37:18

7 THE WITNESS: Okay. We have this set of 12:37:26  
8 behaviors. And as I stated, I think adolescents 12:37:28  
9 need to know about the risks of all those, around 12:37:34  
10 all those behaviors. 12:37:36

11 And I can't state whether that would be 12:37:38  
12 the best or worst way unless we went through each 12:37:42  
13 one individually. 12:37:44

14 BY MS. JOHNSON:

15 Q. Do you think the most effective way to get 12:37:48  
16 adolescents to not engage in unsafe sex is to 12:37:52  
17 educate them about unsafe sex? 12:37:56

18 MS. WALBURN: Objection; form. 12:37:58

19 THE WITNESS: Educate -- I don't know what 12:38:02  
20 you mean by "educate." Do you mean providing 12:38:04  
21 knowledge? 12:38:06

22 BY MS. JOHNSON:

23 Q. Yes. 12:38:06

24 A. Because I don't use that always as the same. I 12:38:16  
25 think that providing knowledge is a necessary but 12:38:18

1 not sufficient way to get kids to not engage in 12:38:24  
2 unsafe sex. 12:38:26

3 Q. And are you aware of studies where education has, in 12:38:34  
4 fact, not been effective in convincing adolescents 12:38:38  
5 not to engage in these risky behaviors? 12:38:44

6 A. You mean each and every one? Or why don't you pick 12:38:54  
7 one, that would be easier, because there's a whole 12:38:58  
8 literature around each and every behavior, and 12:39:00  
9 that's a different literature. 12:39:02

10 Q. Can you list for me a single one of these in which 12:39:04  
11 providing information about the risks has resulted 12:39:08  
12 in a successful change in adolescent behavior, any 12:39:12  
13 one of these nine, can you tell me any single one of 12:39:16  
14 these behaviors that you've listed where they have 12:39:20  
15 been able to change behavior by giving information 12:39:22  
16 about the risks? 12:39:24

17 A. I'm not sure about some of them. I'm not an expert 12:39:48  
18 on all of those. But I would say offhand that 12:39:52  
19 knowledge is, as I said, is necessary but not 12:39:58  
20 sufficient to change these behaviors. I think that 12:40:02  
21 that answers your question. 12:40:04

22 Q. What I'm asking you is as a public health expert, if 12:40:10  
23 you want to change behaviors of adolescents that 12:40:18  
24 have these short-term consequences, would it be more 12:40:22  
25 effective to simply give them information, or are 12:40:26

1       there other things you would like to do as a public       12:40:30  
2       health expert?       12:40:30  
3               MS. WALBURN:  Objection; form.       12:40:32  
4               THE WITNESS:  As a public health educator,       12:40:36  
5       and if I were working with adolescents, I would       12:40:40  
6       somehow elicit the health consequences, knowledge       12:40:46  
7       about those behaviors as a foundation for doing a       12:40:50  
8       behavior change program.       12:40:52  
9               So as I said, it's necessary for       12:40:56  
10       adolescents to understand the risk.  It provides a       12:41:00  
11       foundation, even though it may not be sufficient to       12:41:06  
12       provoke behavior change.       12:41:10  
13  BY MS. JOHNSON:  
14  Q.   So are you saying that adolescents are able to       12:41:14  
15       understand this risk information?       12:41:18  
16               MS. WALBURN:  Objection; misstates the       12:41:20  
17       testimony.       12:41:20  
18               THE WITNESS:  Yeah, I didn't say that.       12:41:26  
19       No, I don't know if -- I don't think adolescents are       12:41:30  
20       always able to understand this risk information.       12:41:32  
21               MR. GARY WILSON:  Should we break for       12:41:36  
22       lunch now?       12:41:36  
23               MS. JOHNSON:  I just have one more       12:41:40  
24       question.       12:41:40  
25  BY MS. JOHNSON:

1  Q.   As an expert in public health, which do you think       12:41:54  
2       would be a more effective way of getting kids to go       12:41:56  
3       to school, to advertise, to tell them to go to       12:42:02

4 school, or to pass a law and require that they go to 12:42:04  
5 school? 12:42:04  
6 MS. WALBURN: Objection; form. 12:42:08  
7 THE WITNESS: I really don't know. 12:42:20  
8 BY MS. JOHNSON:  
9 Q. You don't know? 12:42:20  
10 MS. WALBURN: Objection; asked and 12:42:22  
11 answered. 12:42:22  
12 THE WITNESS: Well, I'll say this, passing 12:42:30  
13 a law hasn't worked very well. But you need the law 12:42:32  
14 as a foundation. I think that if we had a 12:42:38  
15 multicomponent campaign for kids to stay in school 12:42:44  
16 it might be effective, it might be more effective 12:42:46  
17 than what we see right now. 12:42:48  
18 And that would include mass media, or an 12:42:52  
19 ad. I think social marketing may do very well. 12:43:00  
20 BY MS. JOHNSON:  
21 Q. Let me ask your personal opinion. If you could only 12:43:04  
22 choose either advertise to get kids to go to school 12:43:06  
23 or vote for passing a law to require kids to go to 12:43:08  
24 school, which would you, as a citizen of Minnesota, 12:43:08  
25 vote for? 12:43:10

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1 MS. WALBURN: Objection; form. 12:43:10  
2 THE WITNESS: I don't think I can make 12:43:12  
3 that decision really. 12:43:16  
4 BY MS. JOHNSON:  
5 Q. Because why? 12:43:16

6 A. Because I think it takes a lot to get kids to go to 12:43:20  
7 school. 12:43:22  
8 Q. So you would abstain and not vote for either? 12:43:24  
9 MS. WALBURN: Objection; form, asked and 12:43:26  
10 answered. 12:43:26  
11 THE WITNESS: As I said, I don't think I 12:43:28  
12 can answer that question. 12:43:30  
13 BY MS. JOHNSON:  
14 Q. As a citizen of Minnesota, you have no opinion? 12:43:32  
15 MS. WALBURN: Objection; asked and 12:43:34  
16 answered. 12:43:34  
17 THE WITNESS: As a citizen of Minnesota, I 12:43:38  
18 have no answer to your question. 12:43:40  
19 MS. JOHNSON: Let's take a break for 12:43:42  
20 lunch. 12:43:44  
21 MR. GARY WILSON: 12:43. 12:43:46  
22 (Off the record.) 12:43:48  
23 MR. GARY WILSON: 1:34. 13:34:46  
24 BY MS. JOHNSON:  
25 Q. Professor Perry, do you have any children? 13:34:48

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1 A. No, I don't. 13:34:50  
2 Q. But you mentioned your husband, do you have a 13:34:52  
3 husband? 13:34:52  
4 A. I do have a husband. 13:34:54  
5 Q. And does your husband smoke? 13:34:54  
6 A. No, he doesn't. 13:34:56  
7 Q. Has he ever smoked? 13:34:56  
8 A. Yes, he has. 13:34:58

9 Q. When did he smoke? 13:35:00  
10 A. He smoked from 1970 -- in the early '70s to about 13:35:10  
11 1991. 13:35:10  
12 Q. And when did you first meet him? 13:35:14  
13 A. I met him in 1991. 13:35:14  
14 Q. And are you -- were you instrumental in his deciding 13:35:18  
15 not to continue to smoke after 1991? 13:35:20  
16 A. I think so. 13:35:22  
17 Q. Can you explain? 13:35:24  
18 A. Well, I didn't say anything to him directly, but he 13:35:30  
19 knew the kind of work I do, so he quit. 13:35:34  
20 Q. Did he have a difficult time quitting or did he quit 13:35:36  
21 cold turkey? 13:35:38  
22 A. Both. He quit cold turkey and he had a difficult 13:35:44  
23 time. 13:35:44  
24 Q. Is he still a nonsmoker? 13:35:46  
25 A. He is still a nonsmoker. 13:35:48

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1 Q. Since 1980, up until today, you have been in some 13:35:54  
2 position or another in the division of epidemiology 13:36:00  
3 at the University of Minnesota; isn't that right? 13:36:02  
4 A. Yes. For the first few years, it was called the 13:36:06  
5 laboratory of physiological hygiene, so it was a 13:36:10  
6 different name. 13:36:10  
7 And there was a division of epidemiology. 13:36:14  
8 We were separate from that. And then they merged, 13:36:16  
9 and I can't remember the exact year they merged. 13:36:20  
10 Q. But since 1980, up until the present, you have been 13:36:24



11 involved in programs that are designed to keep kids 13:36:28  
12 from starting to smoke; isn't that correct? 13:36:30  
13 A. Not continually. 13:36:34  
14 Q. But starting as early as 1980? 13:36:36  
15 A. As early as 1976, yes. 13:36:38  
16 Q. As early as 1976, and continuing up until today, 13:36:40  
17 even though there may be gaps in-between? 13:36:42  
18 A. I'm not involved in programs right now. 13:36:50  
19 Q. Would you say since 1976 you have been involved in 13:36:54  
20 programs to try to get kids not to start smoking 13:36:58  
21 because it was your professional view that smoking 13:37:00  
22 would be bad for their health? 13:37:02  
23 MS. WALBURN: Objection; form. 13:37:06  
24 THE WITNESS: I was involved in smoking 13:37:12  
25 prevention because smoking cessation wasn't getting 13:37:20

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1 enough people to quit smoking, so there was a 13:37:22  
2 general, really, mandate in the sense that people 13:37:30  
3 shouldn't start. 13:37:32  
4 BY MS. JOHNSON:  
5 Q. And you were concerned at first with smoking 13:37:36  
6 cessation because smoking was bad for health, that 13:37:38  
7 was your view, right? 13:37:38  
8 A. Well, I wasn't involved in smoking cessation, but 13:37:42  
9 yes. 13:37:42  
10 Q. So that -- 13:37:44  
11 A. Yes, but smoking was killing people, so we didn't 13:37:48  
12 want kids to get started on the road to a disease 13:37:52  
13 process. 13:37:52

14 Q. And that dates back to 1976? 13:37:54  
15 A. Yeah, I would say. 13:37:56  
16 Q. And since you joined the University of Minnesota in 13:37:58  
17 1980, you have worked with the Minnesota Department 13:38:06  
18 of Health; is that correct? 13:38:06  
19 A. I have worked with them. 13:38:08  
20 Q. Who within the Department of Health have you worked 13:38:10  
21 with? 13:38:12  
22 A. I have worked with Don Bishop and I have worked with 13:38:24  
23 Gretchen Taylor and I have just -- I've worked a 13:38:36  
24 little bit with Gretchen Griffith. I've had one 13:38:42  
25 meeting with her since she joined the Department of 13:38:44

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1 Health. Those are the people I've worked with. 13:38:50  
2 Q. And since 1980, have you had an opportunity to speak 13:38:58  
3 with individuals within the Department of Health on 13:39:02  
4 many occasions or just a few occasions? 13:39:06  
5 A. Up until I did the 5-A-Day project. 13:39:14  
6 Q. What year was that? 13:39:14  
7 A. I'll check. 13:39:16  
8 Q. Sure. I presume that's not five cigarettes a day? 13:39:28  
9 A. No, no. That grant began in 1993. 13:39:40  
10 Q. And what page is that on your resume? 13:39:44  
11 A. That's page 4, the last one before you get to 13:39:46  
12 Current Grant Support. 13:39:48  
13 Q. Okay. Up until that time you were saying? 13:39:52  
14 A. I had very few contacts with the Department of 13:39:58  
15 Health.

16 Q. Did you have any contacts with anyone outside of the 13:40:04  
17 University of Minnesota up until that time? 13:40:06  
18 MS. WALBURN: Objection; form. 13:40:06  
19 THE WITNESS: What do you mean? 13:40:12  
20 BY MS. JOHNSON:  
21 Q. Within the Minnesota -- you're a state employee, 13:40:16  
22 right? 13:40:16  
23 A. Yes, I am. 13:40:18  
24 Q. With other state employees? 13:40:20  
25 MS. WALBURN: Same objection. 13:40:22

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1 THE WITNESS: Did I have any professional 13:40:24  
2 contact with anyone that was a state -- 13:40:30  
3 BY MS. JOHNSON:  
4 Q. With others in the multiple areas, with your 13:40:36  
5 counterparts within the state organization? 13:40:36  
6 MS. WALBURN: Objection; form. 13:40:38  
7 THE WITNESS: Yeah, I'm -- we were talking 13:40:40  
8 about the Minnesota Department of Health. Should we 13:40:44  
9 stick with them first? 13:40:44  
10 BY MS. JOHNSON:  
11 Q. Let's stick with them first, and then if you can 13:40:48  
12 think of others we'll go and look at them. 13:40:50  
13 A. Within the Minnesota Department of Health, I worked 13:40:56  
14 on a committee in the early '80s that was, I think, 13:41:06  
15 a committee on nonsmoking and health, but I didn't 13:41:12  
16 really attend the committee meetings very much. 13:41:14  
17 And so I really can't remember. I 13:41:18  
18 remember going to the committee meetings, but not 13:41:20

19 really working with anyone. I went to a few of 13:41:26  
20 those meetings. So I can't really name the actors 13:41:30  
21 or actresses then. 13:41:32  
22 I may have talked to people, like I'm sure 13:41:40  
23 I talked with Mike Osterholm, who is the state 13:41:44  
24 epidemiologist. I'm sure I talked with him because 13:41:50  
25 he was on our faculty, adjunct appointment, and also 13:41:58

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1 Jim Shultz, who worked at the State Department of 13:42:02  
2 Health.  
3 Q. Do you know what his title was? 13:42:06  
4 A. I don't know his title, actually. And I'm sure I 13:42:20  
5 talked with other people who I can't remember. Then 13:42:26  
6 when the grant was funded in 1993, I began to meet 13:42:30  
7 regularly with Don Bishop and Gretchen Taylor and 13:42:34  
8 others. 13:42:36  
9 And then I think there was one other 13:42:40  
10 grant. There's one other grant, and I'm looking for 13:43:06  
11 it here. Well, it doesn't matter, I'm working with 13:43:12  
12 Don Bishop on that, as well, and a woman named Ann 13:43:16  
13 Kohlminer (phonetic), that started in 1993, also, 13:43:20  
14 the last one on page 4. 13:43:22  
15 Q. Were you talking earlier about the work you did as a 13:43:34  
16 member of the technical advisory group for the 13:43:36  
17 Minnesota Department of Health Nonsmoking-Minnesota 13:43:38  
18 1983/'84? 13:43:40  
19 A. (Witness nods head.) In there, yeah. 13:43:46  
20 Q. We said we'd first talk about Minnesota Department 13:43:46

21 of Health and then move to other groups, which other 13:43:50  
22 ones did you have in mind? 13:43:52  
23 MS. WALBURN: Objection; form. 13:43:54  
24 THE WITNESS: Yeah, what other groups are 13:43:56  
25 there? 13:43:56

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1 BY MS. JOHNSON:  
2 Q. The other groups that you're referring to when you 13:43:58  
3 said, "Should we start with the Minnesota Department 13:44:00  
4 of Health first?" 13:44:00  
5 A. Well, I think previously my testimony I said I only 13:44:04  
6 worked with or communicated with the Department of 13:44:08  
7 Health and the Department of Education. That's the 13:44:12  
8 only ones I could remember. 13:44:14  
9 And the two people at the Department of 13:44:16  
10 Education I worked with primarily was Gretchen 13:44:20  
11 Griffin, who now is, as I mentioned, at the 13:44:22  
12 Department of Health. And a guy named Stuart 13:44:26  
13 Hanson. 13:44:30  
14 Q. And have you also worked with the Minnesota Lung 13:44:38  
15 Association? 13:44:38  
16 A. I can't remember. I may have. 13:44:44  
17 Q. Or the Minnesota Division of American Cancer 13:44:48  
18 Society? 13:44:48  
19 A. I don't remember. 13:44:52  
20 Q. Okay. 13:44:54  
21 A. I may have. 13:44:54  
22 Q. Looking at your resume, I see that you have been -- 13:45:10  
23 you have participated in what you list as major 13:45:12

24 consultations and advisory boards for groups that 13:45:18  
25 are not only national but international; is that 13:45:22

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1 correct?  
2 A. What groups are you referring to? 13:45:26  
3 Q. They begin on page 5 and extend into page 6, and I'm 13:45:30  
4 referring, for example, to you've been an advisor to 13:45:34  
5 the National Cancer Institute on smoking control 13:45:36  
6 programs; isn't that right? 13:45:36  
7 A. Where is that? 13:45:42  
8 Q. It's the very first entry under Major Consultations 13:45:44  
9 and Advisory Boards on page 5 of your C.V. 13:45:48  
10 A. Oh, there it is. Yeah, that's a national level. 13:45:50  
11 Q. And that dates back to 1979? 13:45:52  
12 A. Right. 13:45:54  
13 Q. And then you've done some work with individuals from 13:45:58  
14 Australia? 13:45:58  
15 A. Yes, I did -- was a consultant and lecturer, yes. 13:46:04  
16 Q. And you've been a member of the National Board of 13:46:08  
17 Directors of the American Lung Association; is that 13:46:12  
18 right?  
19 A. Yes, I was. 13:46:14  
20 Q. And it's a very impressive list. And my question 13:46:16  
21 is: In your opinion, in the field of public health, 13:46:20  
22 is there a network through which people concerned 13:46:26  
23 about public health communicate? 13:46:28  
24 MS. WALBURN: Objection; form. 13:46:30  
25 THE WITNESS: Is there a network through 13:46:36

1       which people in public health communicate?       13:46:38

2 BY MS. JOHNSON:

3 Q.   In the field of public health, if there is an       13:46:42

4       important development in public health, how would       13:46:48

5       you go about sharing that information with others?       13:46:50

6 A.   Well, it depends on the level.   And, for example,       13:46:56

7       for me personally being a researcher, I would       13:46:58

8       publish my articles.       13:47:02

9               That would be the major way I -- that is       13:47:04

10       the major way that I contribute to the field of       13:47:08

11       public health is by publishing scientific journals.       13:47:10

12 Q.   What are the scientific journals, top three, that       13:47:14

13       you would publish in?       13:47:16

14 A.   The "American Journal of Public Health," the       13:47:22

15       "Journal of the American Medical Association," the       13:47:30

16       -- I'm blanking it.   Let me take a look.       13:47:44

17       "Preventive Medicine" is another very good       13:48:08

18       journal.       13:48:10

19 Q.   So one way, if you learned something important in       13:48:12

20       the field of public health and you wanted to share       13:48:16

21       that with others in the field, you would publish in       13:48:20

22       one of those journals that you've mentioned?       13:48:20

23 A.   As a researcher, because there's different ways in       13:48:24

24       which the field of public health works and my part       13:48:28

25       of it is primarily as a researcher.   And the way       13:48:32

1       that I communicate with other researchers is through       13:48:34  
2       publication. That's the major way I communicate.       13:48:38  
3   Q.   What are some other ways that you communicate?       13:48:40  
4   A.   The other ways, I might attend a conference and       13:48:44  
5       present a paper.       13:48:44  
6   Q.   Would you ever just pick up the phone and call       13:48:48  
7       somebody?       13:48:48  
8   A.   I might, but it's not very likely.       13:48:54  
9   Q.   As a researcher, if you discovered something that       13:49:06  
10       was of great importance to your field and you wanted       13:49:14  
11       to get that information to people, what would you       13:49:18  
12       do?       13:49:18  
13               MS. WALBURN: Objection; asked and       13:49:20  
14       answered.       13:49:20  
15               THE WITNESS: I answered that.       13:49:22  
16 BY MS. JOHNSON:  
17   Q.   So you would publish an article, present a paper or       13:49:28  
18       maybe pick up the phone and call someone?       13:49:30  
19               MS. WALBURN: Objection; misstates       13:49:32  
20       testimony, asked and answered.       13:49:34  
21               THE WITNESS: I would publish.       13:49:34  
22 BY MS. JOHNSON:  
23   Q.   You would publish. Is that the only thing you would       13:49:40  
24       do or -- I'm confused. You would publish an       13:49:42  
25       article?       13:49:42

1   A.   I think that publishing an article is the primary       13:49:46



2 way to get scientific -- in peer reviewed 13:49:50  
3 literature, is the primary way to get scientific 13:49:54  
4 information out. It's only through that process 13:49:56  
5 that you get true evaluation, get an evaluation. 13:50:00  
6 Q. If you discovered something that was of a little bit 13:50:10  
7 more urgency, is there any other way that you could 13:50:12  
8 share your learning with your field, short of the 13:50:20  
9 publication process? 13:50:20  
10 A. As a scientist? 13:50:24  
11 Q. As -- 13:50:26  
12 A. As a scientist, you're asking as a scientist? 13:50:30  
13 Q. Yes. 13:50:30  
14 A. I think that the shorter term way is to usually 13:50:34  
15 present at a conference. 13:50:36  
16 Q. You say as a scientist. Are there other ways that 13:50:38  
17 you would communicate other than as a scientist? 13:50:42  
18 MS. WALBURN: Objection; form. 13:50:42  
19 THE WITNESS: As a scientist, I also 13:50:48  
20 communicate by teaching. 13:50:52  
21 BY MS. JOHNSON:  
22 Q. Okay. But you didn't mean to be saying as a 13:50:54  
23 scientist you were wearing a different hat than you 13:50:58  
24 were as a researcher? Are those two the same when 13:51:00  
25 you're answering this question? 13:51:02

1 A. Well, if I discover something in my research as a 13:51:08  
2 researcher, I would want to get it published. A 13:51:12  
3 scientist, as a scientist, I am not just looking at 13:51:14  
4 a particular study, I'm looking at the entire field 13:51:18

5 and can be asked to communicate about that. 13:51:24

6 Q. And if this information that you discovered were 13:51:28

7 really important and you thought that you needed to 13:51:32

8 get that information conveyed more quickly, are 13:51:38

9 there any avenues that you, as either a researcher 13:51:42

10 or scientist, could avail yourself? 13:51:44

11 A. There's other avenues, but that's not what I do, 13:51:46

12 generally. 13:51:48

13 Q. What are the other avenues that would be available 13:51:50

14 if you had such information? 13:51:50

15 A. Telephone, E-mail. 13:51:56

16 Q. Can you think of anything else? 13:52:02

17 A. Not really. 13:52:04

18 Q. Okay. Professor Perry, have you ever read or heard 13:52:10

19 statements by the tobacco companies that there is no 13:52:14

20 causal relationship between cigarette smoking and 13:52:18

21 adverse health effects? 13:52:18

22 A. Yes, I think I have. 13:52:22

23 Q. Have you ever read or heard statements by the 13:52:28

24 tobacco companies that cigarette smoking is not 13:52:30

25 addictive? 13:52:30

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1 A. Yes, I think I have. 13:52:32

2 Q. I'm having trouble hearing you. Are you saying, yes 13:52:38

3 you, think you have or, yes, you have? 13:52:38

4 A. Yes, I have. 13:52:40

5 Q. Yes, you have heard statements by the tobacco 13:52:42

6 companies that there is no causal relationship 13:52:44

7           between cigarette smoking and adverse health           13:52:48  
8           effects?  
9    A.    Yes.   I'm not sure I've heard it, I've read those       13:52:52  
10          statements or -- well, I've heard those statements.     13:52:56  
11          I know of those statements.   And the same that the     13:52:58  
12          tobacco industry says that there's no relationship     13:53:00  
13          between tobacco use and/or tobacco use being           13:53:04  
14          addictive.   13:53:04  
15   Q.    Okay.   Let me ask you, when did you first read or     13:53:10  
16          hear a statement by any tobacco company that there     13:53:14  
17          was no causal relationship between cigarette smoking   13:53:16  
18          and adverse health effects?                               13:53:18  
19   A.    When did I first read or hear?   I don't know,         13:53:24  
20          actually.   13:53:24  
21   Q.    Was it this year?   13:53:26  
22                               MS. WALBURN:   Objection; asked and     13:53:28  
23          answered.   Calls for speculation.                       13:53:30  
24                               THE WITNESS:   I don't know.         13:53:30  
25   BY MS. JOHNSON:

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1   Q.    Could it have been five years ago?                         13:53:34  
2                               MS. WALBURN:   Objection; asked and     13:53:36  
3          answered, calls for speculation.                         13:53:38  
4                               THE WITNESS:   As I said, I don't know.   13:53:38  
5   BY MS. JOHNSON:  
6   Q.    Can you tell me why you sit here today and tell me     13:53:46  
7          that you have read and heard and know that the         13:53:50  
8          tobacco company has made statements that there is no     13:53:52  
9          causal relationship between cigarette smoking and       13:53:54

10           adverse health effects, yet you can give me no gross   13:53:58  
11           time frame for having come upon that knowledge?       13:54:02  
12                   MS. WALBURN:  Objection; form.               13:54:02  
13                   THE WITNESS:  Because I can't place it.  I   13:54:08  
14           can't place when did I actually read and hear it.  I   13:54:14  
15           can't place it.                                       13:54:14  
16  BY MS. JOHNSON:  
17  Q.   Was it before you became involved in this               13:54:16  
18       litigation?   13:54:16  
19                   MS. WALBURN:  Objection; asked and           13:54:18  
20       answered, calls for speculation.                       13:54:22  
21                   THE WITNESS:  Yes.  I believe it was       13:54:28  
22       before this litigation, but I'm not absolutely       13:54:30  
23       positive.   13:54:30  
24  BY MS. JOHNSON:  
25  Q.   Did you hear both statements at the same time or do   13:54:34

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1       you recall having heard one before the other?       13:54:36  
2  A.   I believe I heard about that the tobacco industry   13:55:04  
3       said that cigarette smoking does not have health       13:55:06  
4       consequences before I heard about addiction, about   13:55:12  
5       their statement that it's not addicting.               13:55:14  
6  Q.   Would there be a long gap between hearing these       13:55:18  
7       statements or a short gap?                               13:55:20  
8                   MS. WALBURN:  Objection; calls for           13:55:22  
9       speculation.   13:55:22  
10                   THE WITNESS:  I really don't know.       13:55:24  
11  BY MS. JOHNSON:

12 Q. You said you believed you thought you heard one 13:55:26  
13 before the other, and I'm just trying to get a sense 13:55:28  
14 if it was years. Did years go by between hearing 13:55:30  
15 it? 13:55:30  
16 MS. WALBURN: Objection; asked and 13:55:32  
17 answered, calls for speculation. 13:55:34  
18 THE WITNESS: I really don't know. 13:55:34  
19 BY MS. JOHNSON:  
20 Q. Where did you first hear the statement by the 13:55:46  
21 tobacco companies that there is no causal 13:55:48  
22 relationship between cigarette smoking and adverse 13:55:50  
23 health effects? 13:55:50  
24 MS. WALBURN: Objection; asked and 13:55:52  
25 answered. 13:55:52

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1 THE WITNESS: I don't remember. 13:55:58  
2 BY MS. JOHNSON:  
3 Q. Do you recall whether you read it? 13:56:00  
4 MS. WALBURN: Objection; asked and 13:56:04  
5 answered. 13:56:04  
6 THE WITNESS: I can't remember. 13:56:06  
7 BY MS. JOHNSON:  
8 Q. Do you recall whether you heard someone say it? 13:56:10  
9 MS. WALBURN: Objection; asked and 13:56:10  
10 answered, calls for speculation. 13:56:14  
11 THE WITNESS: I'm sure I heard someone say 13:56:18  
12 it, but I'm not sure if that came before or after 13:56:20  
13 reading, or I'm not sure what came first. 13:56:24  
14 BY MS. JOHNSON:

15 Q. When you first heard or read these statements, did 13:57:00  
16 you believe them? 13:57:00  
17 A. Did I believe the tobacco companies? 13:57:06  
18 Q. Yes. 13:57:08  
19 A. No, I didn't believe them. 13:57:12  
20 Q. Why not? 13:57:22  
21 A. Because there's data showing significant health 13:57:28  
22 consequences from cigarette smoking and because the 13:57:36  
23 general body of science says that cigarette smoking 13:57:40  
24 is addictive. 13:57:42  
25 Q. I notice in your C.V. that you have a number of, I 13:57:48

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1 guess they're listed as grants, major grant support, 13:57:54  
2 that's research, right? 13:57:54  
3 A. Research. 13:57:56  
4 Q. And you said several times, and it says in your 13:57:58  
5 C.V., that you are a scientist, right? 13:58:00  
6 A. Yes. 13:58:02  
7 Q. Okay. When you get grant money, can you describe to 13:58:08  
8 me how you begin your professional scientific 13:58:12  
9 research? 13:58:12  
10 A. You mean after I get the grant money or before I get 13:58:22  
11 the grant money? 13:58:22  
12 Q. Let's say after the grant money has come in and now 13:58:28  
13 you must implement your grant proposal, what's the 13:58:34  
14 first thing that you do? 13:58:36  
15 A. Look at the budget. 13:58:36  
16 Q. Okay. What's the second thing you do? 13:58:40

17 A. Figure out what people you need. 13:58:48  
 18 Q. How do you figure out what people you need? 13:58:50  
 19 A. Well, it depends on the goals of the project. 13:58:54  
 20 Q. Okay. And depending on the goals of the project, 13:58:58  
 21 would you try to find people who are trained in the 13:59:04  
 22 appropriate field to help you with the research? 13:59:06  
 23 A. Either training or experience, I would look for 13:59:14  
 24 people with training or experience. 13:59:16  
 25 Q. And you would look for people with training or 13:59:18

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1 experience in what in particular? 13:59:20  
 2 A. That depends on the grant. 13:59:24  
 3 Q. So if the research is -- give me an example of -- 13:59:28  
 4 let's say you were doing research on heart disease 13:59:34  
 5 among children, you might hire people who are expert 13:59:38  
 6 in survey techniques; is that right? 13:59:40  
 7 A. Well, that's a little hard to answer this question. 13:59:52  
 8 Would you like to take a particular grant, and then 13:59:56  
 9 I can talk about it in a more concrete way? 13:59:58  
 10 Q. Let's take a grant -- 14:00:00  
 11 A. Each grant is very different. 14:00:02  
 12 Q. I understand. Let's say the -- something recent, 14:00:08  
 13 principal investigator of the Minnesota Department 14:00:12  
 14 of Human Services, Protective Environment Research 14:00:14  
 15 Project (PERP) 1994-1995. 14:00:22  
 16 What was that research about? 14:00:22  
 17 MS. WALBURN: What page are you on, 14:00:26  
 18 Counsel? Excuse me, what page are you on? 14:00:32  
 19 BY MS. JOHNSON:

20 Q. Do you have it? 14:00:32  
21 A. No, I don't. 14:00:32  
22 Q. It's the last entry before current grant support, 14:00:38  
23 next to the last entry on page 4. Do you recall 14:00:42  
24 that research? 14:00:42  
25 A. Yes, I do recall that research. 14:00:44

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1 Q. And what were you studying in that? Was this a 14:00:48  
2 proposal, a grant? 14:00:50  
3 A. This was a grant. 14:00:50  
4 Q. Okay. And you were the principal investigator? 14:00:54  
5 A. I was the principal investigator. 14:00:56  
6 Q. And the goal of the research was? 14:00:58  
7 A. To examine how communities, how community and school 14:01:02  
8 environments might affect adolescent drinking. 14:01:08  
9 Q. And as the principal investigator, you were in 14:01:18  
10 charge of the project? 14:01:18  
11 A. I'm in charge of the science, scientific aspects of 14:01:22  
12 the project. 14:01:22  
13 Q. And as the individual in charge of the scientific 14:01:26  
14 aspects of the project, would it be fair -- would 14:01:30  
15 you agree with me that an objective would be to 14:01:34  
16 consider all of the environmental factors that might 14:01:38  
17 affect adolescent drinking? 14:01:40  
18 A. No, I wouldn't agree with you. 14:01:42  
19 Q. Okay. How would you decide which factors you wanted 14:01:46  
20 to study if you're trying to understand the 14:01:48  
21 environment that influences adolescent drinking? 14:01:52



22 A. Well, first of all, this was a small grant. Grants 14:01:58  
23 have usually defined purposes, so "small" meaning 14:02:02  
24 small in dollar amount. 14:02:04  
25 It was a part of or adjacent to another 14:02:08

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1 grant, Project Northland. And we were testing a 14:02:12  
2 theoretical concept on not looking at total 14:02:18  
3 environment but theoretical concept around 14:02:24  
4 environmental factors that were defined by social 14:02:30  
5 cognitive theory. 14:02:30  
6 And defining those at the school and 14:02:32  
7 community level where we had the sample size of 30 14:02:36  
8 communities. 14:02:36  
9 Q. And did you have any individuals assist you in this 14:02:40  
10 research? 14:02:42  
11 A. Yes, I did. 14:02:42  
12 Q. Approximately how many people assisted you in this 14:02:46  
13 research? 14:02:46  
14 A. I think three people. 14:02:50  
15 Q. And did you hire them personally or did someone else 14:02:54  
16 hire them? 14:02:54  
17 A. I don't think any of them were hired, actually. 14:03:04  
18 Q. Did you select them? 14:03:06  
19 A. This turned out to be a doctoral dissertation for 14:03:10  
20 one of my students. 14:03:10  
21 Q. So you knew the person? 14:03:12  
22 A. So I knew the person. And then he needed help with 14:03:20  
23 analyses, so two people helped him with the 14:03:22  
24 analyses. 14:03:24

25 Q. And do you know who those two people were who helped 14:03:26

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1 him with the analyses? 14:03:28

2 A. Yes, because they were on our other project, Project 14:03:34  
3 Northland.

4 Q. And is that typical when you are in charge of the 14:03:36  
5 science of a project to know the qualifications of 14:03:42  
6 the people who are assisting you on the project? 14:03:46

7 A. Not always. It depends. As principal investigator, 14:03:48  
8 if it's a huge project, I may allow a project 14:03:54  
9 director or some piece of it to select people. 14:03:56

10 Q. And would that project director have certain 14:04:00  
11 criterion in selecting the people who would assist 14:04:04  
12 him or her? 14:04:06

13 A. Well, there's two things. One is within the 14:04:08  
14 University of Minnesota you have to hire people who 14:04:12  
15 are at the University of Minnesota, if you can. 14:04:14  
16 There's civil service regulations. 14:04:20

17 If we are hiring new people, we have to go 14:04:22  
18 through a very extensive university format for it, 14:04:28  
19 listing qualifications, why we need those 14:04:32  
20 qualifications, getting them approved, et cetera, so 14:04:36  
21 the long answer is yes. 14:04:38

22 Q. So the qualifications of the people doing research, 14:04:42  
23 whether you are selecting them directly or you have 14:04:44  
24 delegated that to a director to select 14:04:48  
25 qualifications of a person doing research on your 14:04:50

1 projects is an important part of the project; is 14:04:54  
2 that correct?

3 MS. WALBURN: Objection; asked and 14:04:56  
4 answered, misstates the testimony. 14:04:58

5 THE WITNESS: I try to hire people who 14:05:02  
6 have certain qualifications. Sometimes because of 14:05:08  
7 University of Minnesota civil service regulations, I 14:05:14  
8 need to hire someone who's within that job 14:05:18  
9 classification, even though they may not be the 14:05:20  
10 absolute best person for the job. 14:05:22

11 BY MS. JOHNSON:

12 Q. I'd like to ask you a question about what it means 14:05:38  
13 to be a scientist, and I apologize in advance for 14:05:44  
14 not having any scientific background, so my question 14:05:48  
15 may be naive. 14:05:48

16 But as a scientist, is it important to you 14:05:50  
17 just in general as a scientist when you're 14:05:54  
18 considering something to try to get the whole 14:05:58  
19 picture? 14:05:58

20 MS. WALBURN: Objection; form. 14:06:02

21 THE WITNESS: No, that's not the way it 14:06:12  
22 works. 14:06:12

23 BY MS. JOHNSON:

24 Q. How does it work? 14:06:12

25 A. In some cases you can get the whole picture. But, 14:06:18

1 in fact, most science is on particular pieces of the 14:06:24  
2 puzzle. 14:06:26  
3 And the goal is to figure out whatever the 14:06:26  
4 puzzle is, the whole puzzle, and your scientific 14:06:30  
5 work is generally on pieces of it. So sometimes you 14:06:38  
6 can get the whole picture and sometimes you can't. 14:06:40  
7 Q. But even if you're working on just a smaller piece 14:06:44  
8 of the picture, you're aware that it's a smaller 14:06:48  
9 piece of a bigger picture as you're working on it; 14:06:50  
10 is that right? 14:06:50  
11 A. I would hope so. 14:06:52  
12 Q. And before you focus in on a piece of the picture, 14:06:58  
13 you would try to understand the bigger picture 14:07:02  
14 first? 14:07:02  
15 A. Not necessarily. Not necessarily. In fact, it 14:07:06  
16 often works the other way, you build from small 14:07:08  
17 things up. Very often you can't see the bigger 14:07:14  
18 picture. So, I mean, really most scientific work is 14:07:20  
19 very small. 14:07:20  
20 Q. If you began work in a health prevention program for 14:07:26  
21 adolescents, focusing on heart health, as you have, 14:07:32  
22 did you take into account the bigger picture? 14:07:38  
23 MS. WALBURN: Objection; form. 14:07:42  
24 THE WITNESS: You mean when I first 14:07:46  
25 started did I take into account the bigger picture? 14:07:50

1 BY MS. JOHNSON:

2 Q. Yes. 14:07:50

3 A. No. 14:07:50  
4 Q. At any time did you take into account the bigger 14:07:54  
5 picture? 14:07:54  
6 A. I think that incrementally over time you see more 14:07:58  
7 and more. 14:07:58  
8 Q. And that's the objective eventually, isn't it? 14:08:02  
9 MS. WALBURN: Objection; form. 14:08:04  
10 MR. GARY WILSON: Asked and answered, 14:08:06  
11 too. 14:08:06  
12 THE WITNESS: Over time the objective is 14:08:10  
13 to actually do good research, even if it's a small 14:08:14  
14 piece. I don't think, you know, if you see the 14:08:16  
15 whole picture, fine. If you don't, you don't. 14:08:20  
16 BY MS. JOHNSON:  
17 Q. So you would be satisfied if after all these years 14:08:22  
18 of research if you only understood the dietary 14:08:26  
19 component of the health prevention concerns that you 14:08:30  
20 have had about youth and be satisfied to never see 14:08:34  
21 the bigger picture, is that what you're telling me? 14:08:36  
22 A. No, I'm not telling you that. 14:08:38  
23 Q. Okay. When it comes to -- 14:08:44  
24 MS. WALBURN: Excuse me, Counsel. 14:08:48  
25 THE WITNESS: I'd like to finish my 14:08:50

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1 statement. I wouldn't be happy with that. 14:08:50  
2 As my record indicates, I've moved 14:08:52  
3 incrementally into larger questions. Almost each 14:08:54  
4 year the questions get larger. 14:08:58  
5 However, there are a number of scientists 14:08:58

6           who only focus on the nutritional parts of heart           14:09:04  
7           health, only in their entire careers, and they ask       14:09:06  
8           new questions each time.                               14:09:08  
9                       So for me personally, I have expanded my       14:09:14  
10          picture, but for others that may not be the case for   14:09:20  
11          all scientists.                                       14:09:20  
12 BY MS. JOHNSON:  
13 Q.       But for you, personally, seeing the bigger picture       14:09:22  
14          as it relates to youth health is important?           14:09:26  
15                       MS. WALBURN: Objection; asked and           14:09:26  
16          answered on multiple occasions.                       14:09:28  
17                       THE WITNESS: For me, personally, I           14:09:32  
18          believe I see bigger and bigger increments as time   14:09:38  
19          goes on.   14:09:38  
20 BY MS. JOHNSON:  
21 Q.       I'd like to refer to a document that's been           14:09:46  
22          previously marked as Defense 2507, and hand a copy   14:09:56  
23          to the witness.                                       14:09:56  
24                       MS. WALBURN: Do you have a copy for us,       14:10:00  
25          Counsel?   14:10:00

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1                       MS. JOHNSON: This is provided to us by       14:10:04  
2          you.   14:10:04  
3                       MS. WALBURN: Excuse me, I'm going to       14:10:06  
4          object to this procedure. The standing procedure in   14:10:06  
5          depositions has been to provide a copy of an exhibit   14:10:10  
6          to the opposing attorney, and it is impossible --   14:10:12  
7                       MS. JOHNSON: Consider it provided.           14:10:14

8 MS. WALBURN: Thank you. 14:10:16  
9 MR. PURVIS: Why don't you substitute this 14:10:28  
10 one for that since it has the exhibit stamp on it. 14:10:32  
11 MS. WALBURN: Are these the same 14:10:34  
12 document? 14:10:34  
13 MR. PURVIS: Yes. 14:10:36  
14 BY MS. JOHNSON: 14:10:38  
15 Q. Now, this is a 168-page document that we described 14:10:44  
16 before, and it lists on every page 25 documents 14:10:50  
17 identified by the beginning and ending point of the 14:10:54  
18 Bates range on that document, is that what you see 14:10:58  
19 on yours? 14:10:58  
20 A. And if it only has one, that means it's just one 14:11:06  
21 page? 14:11:06  
22 Q. This is your document, so I guess I'll have to look 14:11:10  
23 to you for that answer. 14:11:10  
24 MS. WALBURN: Objection; misstates what 14:11:12  
25 the testimony has been about this document. 14:11:14

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1 BY MS. JOHNSON:  
2 Q. Professor Perry, what do you understand this 14:11:24  
3 document to be? It was provided to us as materials 14:11:28  
4 that you were relying upon for your testimony in 14:11:30  
5 this case. Have you ever seen this document before 14:11:34  
6 today? 14:11:34  
7 MS. WALBURN: Objection; asked and 14:11:36  
8 answered. 14:11:36  
9 THE WITNESS: I believe I have. 14:11:40  
10 BY MS. JOHNSON:

11 Q. Have you seen it in this form before today? 14:11:42  
12 A. I believe I have. I'm not 100 percent sure. 14:11:48  
13 Q. And when did you first see this document? 14:11:50  
14 A. This document, as it is, must have been at the end 14:11:58  
15 of May 1997. 14:11:58  
16 Q. Just a month ago? 14:12:02  
17 A. Yes. 14:12:02  
18 Q. Okay. Was that before or after you prepared your 14:12:06  
19 expert report? 14:12:06  
20 A. At the same time. 14:12:08  
21 Q. At the same time? 14:12:08  
22 A. This was to be attached to my expert report. 14:12:12  
23 Q. Have you personally reviewed the documents that are 14:12:18  
24 identified in this report? 14:12:20  
25 MS. WALBURN: Objection; asked and 14:12:22

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1 answered. 14:12:22  
2 THE WITNESS: I've reviewed some of the 14:12:24  
3 documents that are -- well, I'd have to go through 14:12:28  
4 each and every one to really answer that question at 14:12:34  
5 this point. I mean -- 14:12:40  
6 BY MS. JOHNSON:  
7 Q. What's your answer? 14:12:42  
8 MS. WALBURN: You can read back the 14:12:42  
9 transcript; it's been answered. 14:12:44  
10 (The requested portion read back.) 14:12:44  
11 BY MS. JOHNSON:  
12 Q. As I recall your testimony earlier today, you said 14:13:00



13           that you have about 170 documents; is that correct?       14:13:04  
14   A.    I believe what I said is that I had read 170               14:13:16  
15           documents, but now in thinking of it, I have looked       14:13:20  
16           at quite a few more.                                       14:13:22  
17   Q.    And where have you looked at the quite a few more       14:13:28  
18           documents that you're referring to now?               14:13:32  
19   A.    In my bedroom.   14:13:34  
20   Q.    Have you looked at over 4,000 documents?               14:13:40  
21   A.    I'm not sure if these refer to documents or pages.       14:13:48  
22   Q.    These refer to documents.                                   14:13:54  
23   A.    I'm not sure because I've looked at a lot of ads,       14:14:02  
24           and if each ad is a document, then it added up to a       14:14:08  
25           lot of --   14:14:10

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1   Q.    Can you describe to me what ads you've looked at.       14:14:12  
2   A.    I have looked at ads I think for all of the -- I       14:14:26  
3           think for all the tobacco companies.                   14:14:28  
4   Q.    How many different ads have you looked at, roughly?       14:14:36  
5   A.    I've looked at about four boxes full of ads               14:14:46  
6           (indicating).  
7   Q.    And now you're making a movement with your hand to       14:14:48  
8           like a Banker's box?                                       14:14:52  
9   A.    Smaller than a Banker's box.                               14:14:54  
10   Q.    So that's about --   14:14:56  
11                       MS. WALBURN: Excuse me, the witness was       14:14:58  
12           still answering the question.                           14:14:58  
13                       THE WITNESS: I was referring to the file       14:15:02  
14           boxes, Banker's boxes I think are those big ones,       14:15:06  
15           these are smaller ones.                                   14:15:06

16 BY MS. JOHNSON:  
17 Q. Four boxes of ads? 14:15:08  
18 A. Yes. 14:15:08  
19 Q. Cigarette advertisements, I presume? 14:15:12  
20 A. Yes. 14:15:12  
21 Q. And what do you expect to say at the time of trial 14:15:16  
22 about the cigarette advertisements that you have 14:15:20  
23 reviewed? 14:15:20  
24 MS. WALBURN: Objection; form. 14:15:20  
25 THE WITNESS: I'm not sure what I'll say 14:15:26

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1 at the time of trial about those cigarette 14:15:28  
2 advertisements. I anticipate talking about them 14:15:32  
3 historically and how they may have -- what messages 14:15:40  
4 they had in them over time and how they may have 14:15:42  
5 influenced young people. 14:15:44  
6 BY MS. JOHNSON:  
7 Q. Okay. When you say you may look at them 14:15:50  
8 historically, how far back in time are you going to 14:15:52  
9 go with cigarette advertising? 14:15:54  
10 A. I can't say at this point. 14:15:58  
11 Q. Based on the research you've done to date, how far 14:16:04  
12 back are you going, have you gone? 14:16:06  
13 A. I've gone back to the beginning of the century. 14:16:10  
14 Q. That would be 1900? 14:16:16  
15 A. Somewhere around there. 14:16:22  
16 Q. Okay. And what messages have you found in cigarette 14:16:24  
17 advertisements beginning in 1900? 14:16:24

18 MS. WALBURN: Objection; form. 14:16:26  
19 THE WITNESS: You want me to go through 14:16:30  
20 all the cigarette advertisements from 1900 on and 14:16:34  
21 talk about the messages that were in them? 14:16:36  
22 BY MS. JOHNSON:  
23 Q. Yes. 14:16:36  
24 MS. WALBURN: Objection; form. 14:16:38  
25 THE WITNESS: Can you state what you want 14:16:44

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1 me to do? 14:16:44  
2 BY MS. JOHNSON:  
3 Q. Can you -- 14:16:46  
4 A. Maybe one at a time so I know -- so I don't -- you 14:16:50  
5 know, I'd like to know -- 14:16:52  
6 Q. Well, this is a deposition, I'm supposed to learn 14:16:56  
7 today what you're going to be testifying to at the 14:16:58  
8 time of trial. 14:16:58  
9 And if you're going to be talking about 14:17:00  
10 the messages in cigarette ads beginning in 1900, I'm 14:17:04  
11 entitled to ask you questions what you intend to 14:17:08  
12 tell the jury about cigarette ads from the time you 14:17:12  
13 started looking at them and the messages that were 14:17:14  
14 in them. 14:17:14  
15 So since I haven't done the research and 14:17:16  
16 you have, I'm asking you to tell me what -- 14:17:18  
17 MS. WALBURN: Well, excuse me, I'm going 14:17:20  
18 to -- first of all, I'm not even sure there's a 14:17:22  
19 question here. But to the extent there is one, I'm 14:17:24  
20 going to object on the basis of form and that you're 14:17:26

21 asking questions that simply are not answerable in 14:17:28  
22 the form that they're being stated. 14:17:28  
23 MS. JOHNSON: Does that mean at the time 14:17:30  
24 of trial this witness will not provide any testimony 14:17:32  
25 about the messages in cigarette advertisements from 14:17:34

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1 1900 to the present? 14:17:36  
2 MS. WALBURN: No, it doesn't. It means 14:17:38  
3 that the witness will be responding to properly 14:17:40  
4 framed questions at trial. 14:17:40  
5 BY MS. JOHNSON:  
6 Q. Can you recall, as you sit here today, any message 14:17:50  
7 in any cigarette ad that you have reviewed? 14:17:52  
8 A. Yes, I can remember some messages in some 14:18:00  
9 advertisements. 14:18:00  
10 Q. And which ones come to mind? 14:18:02  
11 A. Okay. One ad says, "Lucky separates the men from 14:18:14  
12 the boys but not the girls." 14:18:16  
13 Q. Tell me another one. 14:18:20  
14 A. One message says, "Come to Marlboro country." 14:18:28  
15 Q. Okay. Any others come to mind? 14:18:34  
16 A. "Alive with pleasure." 14:18:38  
17 Q. Any others? 14:18:42  
18 A. Not the exact written message. 14:18:54  
19 Q. So you're going to talk about "Lucky separates the 14:19:02  
20 men from the boys but not the girls"; "Come to 14:19:04  
21 Marlboro country"; and "Alive with pleasure"? 14:19:06  
22 MS. WALBURN: Objection; misstates the 14:19:10

23 testimony. 14:19:10  
24 BY MS. JOHNSON:  
25 Q. I wasn't finished with my question. 14:19:12

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1 MS. WALBURN: Excuse me, and form. 14:19:12  
2 THE WITNESS: I'm going to testify about 14:19:16  
3 all of the cigarette advertisements and promotions 14:19:22  
4 and messages and how they influence young people to 14:19:24  
5 smoke. 14:19:26  
6 And so if right now I -- those are the 14:19:28  
7 only messages that I can remember, the verbal 14:19:32  
8 messages, that's all I can remember right now, but 14:19:34  
9 that's not the limitation on my testimony. 14:19:36  
10 MS. WALBURN: I'll note, Counsel, that you 14:19:38  
11 have a listing of advertisements that were produced 14:19:40  
12 to the depository that Professor Perry has reviewed 14:19:44  
13 in this litigation, and that would give you further 14:19:46  
14 indication of the areas of her testimony. 14:19:50  
15 BY MS. JOHNSON:  
16 Q. How did this document come to be? 14:19:52  
17 MS. WALBURN: Objection; asked and 14:19:58  
18 answered. 14:19:58  
19 THE WITNESS: These are the documents that 14:20:04  
20 were provided me. 14:20:06  
21 BY MS. JOHNSON:  
22 Q. Who provided these to you? 14:20:08  
23 MS. WALBURN: Excuse me, form, and asked 14:20:14  
24 and answered, to the extent I understand the 14:20:16  
25 question. 14:20:16

1 THE WITNESS: Can you restate that 14:20:18  
2 question? 14:20:20  
3 BY MS. JOHNSON:  
4 Q. What part don't you understand? 14:20:20  
5 A. The "who." 14:20:22  
6 Q. Who gave you this document? 14:20:24  
7 A. This particular document? 14:20:28  
8 Q. Have there been others like this document? 14:20:30  
9 MS. WALBURN: Objection; form. 14:20:32  
10 THE WITNESS: I mean, this particular 14:20:36  
11 document, who gave me this document? 14:20:36  
12 BY MS. JOHNSON:  
13 Q. Yes. 14:20:38  
14 A. I don't have this document. 14:20:40  
15 Q. Oh, you don't have this document that's been marked 14:20:42  
16 as Defense 2507? 14:20:44  
17 A. No, not in my possession. 14:20:46  
18 Q. Do you know how the documents that came to be 14:20:50  
19 printed on here were selected? 14:20:56  
20 A. Yes, I have some idea how they were selected. 14:21:02  
21 Q. You have some idea? 14:21:02  
22 A. Yes. 14:21:04  
23 Q. And you have some idea, what is your understanding 14:21:06  
24 of how they were selected? 14:21:08  
25 A. I wanted documents that related to youth and smoking 14:21:16

1 and advertising, tobacco and cigarette advertising 14:21:24  
2 in particular. 14:21:24  
3 Then from the repository of documents, the 14:21:32  
4 lawyers provided me with these documents based on 14:21:36  
5 what I wanted. 14:21:36  
6 Q. Did you give them a written list of what you 14:21:38  
7 wanted?  
8 A. No, I don't believe I gave them a written list. 14:21:42  
9 Q. Who did you give the list to? 14:21:46  
10 MS. WALBURN: Objection; misstates the 14:21:50  
11 testimony. 14:21:50  
12 THE WITNESS: I said I didn't write a 14:21:52  
13 list. 14:21:52  
14 BY MS. JOHNSON:  
15 Q. To whom did you list these orally? 14:21:56  
16 A. I listed them to Roberta and Gary and Tara and maybe 14:22:08  
17 Susan, but I think it's Roberta, Gary and Tara. 14:22:14  
18 Q. Now, do you know what advanced degrees Roberta has 14:22:20  
19 in advertising or youth issues? 14:22:22  
20 A. I know that Roberta was a journalist, so she has 14:22:32  
21 some experience with the whole area of mass 14:22:34  
22 communications. 14:22:34  
23 Q. And what about Gary, what advanced degrees does he 14:22:38  
24 have in advertising and youth issues? 14:22:40  
25 A. Well, I don't know about Gary. 14:22:42

1 Q. And what about Tara? 14:22:44

2 A. I don't know about Tara's advanced degrees, other 14:22:48  
3 than that they're lawyers. 14:22:54  
4 Q. Other than that they're? 14:22:54  
5 A. They're lawyers. So that is an advanced degree. 14:22:54  
6 Q. Is that an advanced degree in advertising? I'm 14:22:58  
7 asking about advanced degrees in advertising. 14:22:58  
8 A. It can be an advanced degree in advertising, if 14:23:02  
9 that's what the lawyer specialized in. 14:23:04  
10 Q. Do you know whether any of these lawyers have 14:23:06  
11 specialized and gotten advanced degrees in 14:23:08  
12 advertising? 14:23:08  
13 A. No, I don't know that. 14:23:10  
14 Q. And you don't know whether Tara has any special 14:23:14  
15 training in advertising, do you? 14:23:14  
16 A. I don't know that. 14:23:16  
17 Q. And you don't know whether Susan has any special 14:23:18  
18 training in advertising, do you? 14:23:20  
19 A. I don't know that. 14:23:20  
20 Q. So you gave your request orally to four lawyers; is 14:23:24  
21 that what I understand? 14:23:26  
22 MS. WALBURN: Objection; asked and 14:23:28  
23 answered, misstates the testimony. 14:23:30  
24 BY MS. JOHNSON:  
25 Q. Now, you mentioned earlier that you're aware that 14:23:34

1 there are 30 million either pages or documents in 14:23:36  
2 the depository; is that correct? 14:23:38  
3 A. That's right. 14:23:38



4 Q. And we have approximately 4,000 pages before us 14:23:42  
5 today that are the result of your request that you 14:23:44  
6 placed with the lawyers; is that right? 14:23:46  
7 MS. WALBURN: Objection; form. Do you 14:23:48  
8 want us to count these? 14:23:48  
9 THE WITNESS: I'm assuming that there's 14:23:52  
10 about 4,000 that I have out of whatever number of 14:23:58  
11 documents there are. 14:23:58  
12 BY MS. JOHNSON:  
13 Q. We don't have 30 million here, do we? 14:24:00  
14 A. No, we don't have 30 million here. 14:24:04  
15 Q. Do you know whether you have gotten every document 14:24:10  
16 that is available at the repository that relates to 14:24:16  
17 your request? 14:24:16  
18 MS. WALBURN: Objection; form. 14:24:18  
19 THE WITNESS: I don't know if I have all 14:24:26  
20 the documents related to my request, but I'm 14:24:32  
21 assuming I don't. 14:24:32  
22 BY MS. JOHNSON:  
23 Q. Why are you assuming that you don't? 14:24:36  
24 A. Because there must be some more related to youth 14:24:44  
25 that I haven't seen yet. 14:24:46

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1 Q. And do you expect to get more documents as a result 14:24:52  
2 of your request or have they completed -- 14:24:54  
3 A. I expect to see more documents. 14:24:58  
4 Q. Are you aware of any documents related to the topics 14:25:08  
5 that you made a request for that you haven't seen? 14:25:14  
6 MS. WALBURN: Objection; asked and 14:25:16

7	answered, calls for speculation.	14:25:18
8	BY MS. JOHNSON:	
9	Q. You said you had, at the beginning of the	14:25:24
10	deposition --	14:25:24
11	MR. GARY WILSON: Are you withdrawing that	14:25:26
12	question?	14:25:26
13	MR. PERRY WILSON: Who's doing the	14:25:32
14	objecting here? There's only supposed to be one	14:25:34
15	lawyer.	14:25:34
16	MS. WALBURN: Maybe you can take your own	14:25:36
17	advice.	14:25:38
18	MR. PERRY WILSON: Why don't you take my	14:25:40
19	advice and then I'll stay out of it. You're	14:25:44
20	entitled to have one person object.	14:25:46
21	MS. WALBURN: Well, you're breaking your	14:25:48
22	own rule.	14:25:48
23	MR. PERRY WILSON: Only after you did.	14:25:50
24	MS. WALBURN: Can we proceed.	14:25:52
25	BY MS. JOHNSON:	

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1	Q.	You said this morning that you had 170 documents in	14:26:00
2		your possession at home; is that right?	14:26:02
3		MS. WALBURN: Objection; asked and	14:26:04
4		answered, and now misstating the testimony.	14:26:08
5		THE WITNESS: I think I said this morning	14:26:10
6		that I had read about 170 documents. Then this	14:26:14
7		afternoon, when I thought about it, I realized I had	14:26:18
8		seen a lot more because I hadn't included in that	14:26:22

9 170 the four boxes of advertisements that are also 14:26:28  
10 listed here. 14:26:30  
11 So there's really considerably more than 14:26:32  
12 170 documents. 14:26:34  
13 BY MS. JOHNSON:  
14 Q. There really is considerably more than 170 14:26:36  
15 documents? 14:26:38  
16 A. Uh-hm. If each of these are the documents that were 14:26:46  
17 given to me. 14:26:46  
18 Q. You said you reviewed in your bedroom four boxes of 14:26:50  
19 about 4,000 pages of cigarette ads. Where are those 14:26:56  
20 ads now? 14:26:56  
21 A. First, I'm not sure there were 4,000. I just said 14:26:58  
22 four boxes. And, second, they're still in my 14:27:02  
23 bedroom. 14:27:02  
24 Q. I'd like to refer back to your C.V. under Major 14:27:16  
25 Grant Support. And could you identify for me each 14:27:20

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1 research project where you have asked lawyers to do 14:27:26  
2 the research for you? 14:27:28  
3 MS. WALBURN: Objection; misstates 14:27:30  
4 testimony, form. 14:27:32  
5 THE WITNESS: You want me to look through 14:27:38  
6 my grants and answer which I've asked lawyers to be 14:27:44  
7 involved in the research? 14:27:46  
8 BY MS. JOHNSON:  
9 Q. No, to do the research for you, to make the 14:27:48  
10 selection of data to look at. 14:27:50  
11 MS. WALBURN: Objection. 14:27:50

12 BY MS. JOHNSON:

13 Q. When you were the principal investigator of the 14:27:52  
14 National Interagency Council on Smoking and Health, 14:27:56  
15 did you hire or work with any lawyers and tell them 14:27:58  
16 to go get you all the relevant documents? 14:28:00

17 MS. WALBURN: Objection; form. 14:28:06

18 BY MS. JOHNSON:

19 Q. If you can answer yes or no, that would be much 14:28:10  
20 easier, as I think you probably will know if you -- 14:28:12

21 A. Well, no, I can't answer yes or no because there may 14:28:16  
22 have been lawyers involved in some of -- 14:28:18

23 Q. I'm not asking -- 14:28:20

24 MS. WALBURN: Excuse me, Counsel, the 14:28:20  
25 witness was not through responding to the question, 14:28:22

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1 and I'd appreciate it if you give Professor Perry an 14:28:24  
2 opportunity to finish her answer. That would be a 14:28:28  
3 nice courtesy. 14:28:28

4 BY MS. JOHNSON:

5 Q. Let me form my question again so that we're very 14:28:32  
6 clear because I don't want to waste a lot of time 14:28:34  
7 about definitions. 14:28:36

8 I'm going to ask you to point out in your 14:28:40  
9 C.V., which lists your major grant support, each and 14:28:46  
10 every project where you had lawyers do the research 14:28:52  
11 for you. 14:28:52

12 MS. WALBURN: And I'm going to object on 14:28:56  
13 the basis that it's mischaracterizing prior 14:29:00

14 testimony and on the basis of form. 14:29:02

15 BY MS. JOHNSON:

16 Q. So let's go through them beginning on page 2. When 14:29:08

17 you were the principal investigator of the National 14:29:14

18 Interagency Council on Smoking and Health, did you 14:29:14

19 have a team of four lawyers go out and do the 14:29:14

20 research for you for that project? 14:29:14

21 MS. WALBURN: Objection; form. 14:29:16

22 THE WITNESS: What I'm having a problem 14:29:18

23 with in answering this question is that the National 14:29:24

24 Interagency Council on Smoking and Health decided on 14:29:26

25 the topics for the research. 14:29:28

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1 And there may have been lawyers involved 14:29:30

2 in the decision on those topics, so that, in fact, 14:29:34

3 they may have narrowed down what it was I was to 14:29:42

4 work on. 14:29:44

5 BY MS. JOHNSON:

6 Q. That's not my question. 14:29:46

7 MS. WALBURN: Excuse me, she was not done 14:29:48

8 answering. 14:29:48

9 THE WITNESS: So that, in fact, I think 14:29:52

10 it's quite parallel to this point, that they 14:29:58

11 selected the universe of things that I was to 14:30:02

12 study. So the answer TO your question is I don't 14:30:06

13 know.

14 BY MS. JOHNSON:

15 Q. Well, let me ask the question again, and if I use a 14:30:12

16 word in this question that you don't understand, 14:30:12

17           please stop me so that we don't have to spend a lot       14:30:16  
18           of time on this.   14:30:16  
19                       I'm not asking you whether the National       14:30:22  
20           Interagency Council on Smoking and Health defined       14:30:22  
21           the subject that you were to look at.                       14:30:24  
22                       I'm asking you whether as the principal       14:30:30  
23           investigator you asked four lawyers to go do the       14:30:34  
24           research on your subject for that research project.       14:30:40  
25           Is that what happened?                                       14:30:40

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1                       MS. WALBURN:  Objection; misstates prior       14:30:42  
2           testimony, asked and answered, and form.                   14:30:44  
3                       THE WITNESS:  I have hired and worked with       14:30:50  
4           lawyers on Project Northland.                               14:30:52  
5  BY MS. JOHNSON:  
6  Q.   Is that Project Northland that we're talking about       14:30:54  
7       on page 2?   14:30:56  
8  A.   No.  So in terms of this, no.                                   14:31:02  
9  Q.   And when you were the co-principal investigator for       14:31:06  
10       the National Institute on Drug Abuse for the                   14:31:08  
11       University of Minnesota, 1982 to 1985, did you               14:31:12  
12       personally ask lawyers to go and do your research           14:31:18  
13       for you?   14:31:20  
14                       MS. WALBURN:  Objection; misstates prior       14:31:22  
15       testimony, form.   14:31:24  
16                       THE WITNESS:  I didn't work with lawyers       14:31:30  
17       on this grant.   14:31:30  
18  BY MS. JOHNSON:

19 Q. As co-principal investigator for the National 14:31:36  
20 Institute on Drug Abuse, Tailoring Drug Prevention 14:31:40  
21 to the School Environment, University of Minnesota, 14:31:40  
22 1983-1986, as co-principal investigator, did you 14:31:46  
23 rely on lawyers to do the research for you for that 14:31:50  
24 project? 14:31:50  
25 MS. WALBURN: Objection; misstates prior 14:31:54

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1 testimony, and form. And I'll just, you know, give 14:31:58  
2 you notice here, Counsel, that, you know, you might 14:32:00  
3 want to think about the form of your questions 14:32:02  
4 because none of these are going to be admissible, 14:32:04  
5 but it's your time here. 14:32:06  
6 THE WITNESS: I didn't work with lawyers 14:32:10  
7 on that project. 14:32:10  
8 BY MS. JOHNSON:  
9 Q. I didn't hear you. 14:32:12  
10 A. I didn't work with lawyers on that project. 14:32:14  
11 Q. And the next one is a "principal investigator for 14:32:18  
12 the National Heart, Lung, and Blood Institute, a 14:32:20  
13 third grade nutrition program for cardiovascular 14:32:22  
14 health, University of Minnesota 1983-1988." 14:32:26  
15 As principal investigator, did you rely on 14:32:30  
16 lawyers to do the research for you for this 14:32:32  
17 project? 14:32:32  
18 MS. WALBURN: Objection; misstates prior 14:32:34  
19 testimony, and form. 14:32:36  
20 THE WITNESS: There were lawyers involved 14:32:40  
21 in this study. I believe there were lawyers 14:32:44

22	involved in this study.	14:32:44
23	BY MS. JOHNSON:	
24	Q. Okay. I told you if you don't understand the words	14:32:50
25	I'm using to let me know. I'm not asking were	14:32:52
200		
1	lawyers involved in any way, shape or form, I'm	14:32:54
2	asking you about you and the research you relied	14:32:58
3	on.	14:32:58
4	Did you ask the lawyers to go out and get	14:33:00
5	the data for you?	14:33:02
6	MS. WALBURN: Objection; misstates prior	14:33:04
7	testimony, form, and asked and answered.	14:33:06
8	You've gotten a perfectly good answer to	14:33:08
9	that question and you're really coming on the brink	14:33:14
10	of harassment here, and I would caution you to	14:33:16
11	observe proper protocol.	14:33:18
12	BY MS. JOHNSON:	
13	Q. You may answer.	14:33:20
14	A. I worked with a lawyer on -- I believe I worked with	14:33:22
15	a lawyer on this project which does involve data.	14:33:28
16	Q. Did the lawyer gather the data?	14:33:30
17	MS. WALBURN: Objection.	14:33:30
18	THE WITNESS: I don't think the lawyer	14:33:38
19	gathered the data.	14:33:38
20	BY MS. JOHNSON:	
21	Q. Is it customary at the University of Minnesota,	14:33:46
22	division of epidemiology, for the scientists to ask	14:33:50
23	the lawyers to gather data for their research	14:33:54



24 projects? 14:33:54

25 MS. WALBURN: Objection; misstates prior 14:33:56

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1 testimony. 14:33:56

2 THE WITNESS: It is customary to have 14:34:02

3 lawyers collect data when it's relevant to the 14:34:06

4 subject area. 14:34:06

5 BY MS. JOHNSON:

6 Q. Other than in preparation for this case, have you, 14:34:12

7 Cheryl Perry, ever asked lawyers to gather data for 14:34:20

8 you? 14:34:20

9 MS. WALBURN: Objection; misstates prior 14:34:24

10 testimony. I don't know where you're getting this 14:34:26

11 idea, Counsel, that data was gathered by lawyers. 14:34:28

12 So your entire line of questioning has been totally 14:34:30

13 out of line in this area. 14:34:32

14 THE WITNESS: First, for this testimony 14:34:38

15 data was not gathered by lawyers. Second, I had 14:34:42

16 lawyers working on Project Northland and they were 14:34:46

17 gathering information for me on laws and so forth 14:34:52

18 related to alcohol use. So, yes, I did have lawyers 14:34:56

19 gathering data for me. 14:34:58

20 BY MS. JOHNSON:

21 Q. As far as you know, are there any laws in these 14:35:02

22 documents that you've reviewed for your testimony in 14:35:06

23 this case? 14:35:06

24 A. I would have to review those whether there might be 14:35:24

25 laws in there. 14:35:28

1 Q. You've already testified that there were at least 14:35:34  
2 four boxes of just cigarette advertisements included 14:35:34  
3 in here; isn't that right? 14:35:36  
4 MS. WALBURN: Objection; asked and 14:35:36  
5 answered. 14:35:36  
6 MS. JOHNSON: This might be a good time to 14:35:42  
7 take a break. 14:35:42  
8 MS. WALBURN: You're withdrawing the 14:35:44  
9 question then? 14:35:46  
10 MS. JOHNSON: About whether this is a good 14:35:48  
11 time to take a break? 14:35:48  
12 MS. WALBURN: No, your question that was 14:35:52  
13 pending when all the sudden you asked to take a 14:35:54  
14 break. 14:35:54  
15 MS. JOHNSON: Read the question back, 14:35:56  
16 please. 14:36:14  
17 (The requested portion read back.)  
18 MS. JOHNSON: Let's take a break. 14:36:16  
19 MS. WALBURN: Are you withdrawing the 14:36:18  
20 question? 14:36:20  
21 MS. JOHNSON: I think this is a good time  
22 to take a break.  
23 MS. WALBURN: We'll take breaks when we 14:36:22  
24 want when questions are pending, as well. 14:36:26  
25 MR. WILSON: 2:36. 14:36:32

1 (Off the record.) 14:36:34  
2 MS. JOHNSON: Back on the record. 14:44:28  
3 MR. WILSON: It is now 2:44. 14:44:32  
4 BY MS. JOHNSON:  
5 Q. Professor Perry, I want to direct your attention now 14:44:42  
6 to the two documents that have been identified as 14:44:44  
7 Defendants 2508 and Defendants 2509. 14:44:50  
8 Do you have copies of those? 14:44:52  
9 A. I don't know, actually. 14:44:54  
10 Q. This is 2508. 14:45:02  
11 MS. WALBURN: And I would like a copy, as 14:45:04  
12 well. 14:45:04  
13 BY MS. JOHNSON:  
14 Q. You can take a minute just to familiarize yourself 14:45:32  
15 with this. 14:45:34  
16 MR. PERRY WILSON: We should probably go 14:45:36  
17 off the record. 14:45:36  
18 MS. WALBURN: No, we don't go off the 14:45:38  
19 record for that. 14:45:38  
20 MR. PERRY WILSON: Yeah, we do. 14:45:40  
21 MS. WALBURN: No, we don't. 14:45:40  
22 MR. PERRY WILSON: Why not? 14:45:42  
23 MS. WALBURN: Because that's not the 14:45:42  
24 practice in this litigation. 14:45:42  
25 MR. PERRY WILSON: It has been. 14:45:44

1 MS. WALBURN: Well, you're wrong. 14:45:46  
2 MR. PERRY WILSON: When the witness takes 14:45:52

3 a long time to review a document, it's my 14:45:54  
4 understanding we've been going off the record. 14:45:56  
5 MS. WALBURN: Number one, that's not true, 14:45:56  
6 and, number two, I think we're waiting for defense 14:46:00  
7 counsel to provide me with a copy, which is the 14:46:02  
8 standing practice in the litigation. 14:46:04  
9 MS. JOHNSON: When you're done, here it 14:46:06  
10 is, your copy of Defense 2508 and your copy of 14:46:08  
11 Defense 2509. 14:46:12  
12 MS. WALBURN: Thank you. 14:46:12  
13 MS. JOHNSON: Just so we can clear the 14:46:32  
14 table up a bit, is that a document of mine under the 14:46:36  
15 2506? Okay. 14:46:44  
16 BY MS. JOHNSON:  
17 Q. Do you recognize the documents that are marked as 14:46:46  
18 2508? 14:46:50  
19 A. Yes, I do. 14:46:52  
20 Q. And could you describe them for me in a general 14:46:54  
21 fashion, please. 14:46:56  
22 A. These are internal tobacco industry documents, notes 14:47:04  
23 that I took on those documents as I was reading 14:47:06  
24 them. 14:47:06  
25 Q. Did you prepare a summary for every document that 14:47:12

1 you reviewed? 14:47:14  
2 A. No, I did not. 14:47:16  
3 Q. How did you determine which documents you would 14:47:18  
4 summarize? 14:47:18

5 A. I summarized almost -- I summarized most of the 14:47:28  
6 documents that had anything written on them, unless 14:47:36  
7 they were somewhat repetitive from what I had seen 14:47:40  
8 before, so I didn't summarize any ads. 14:47:48  
9 Q. The outline that you have at the top of 2508 -- 14:48:04  
10 MR. GARY WILSON: 2509. 14:48:10  
11 BY MS. JOHNSON:  
12 Q. -- 2509, who prepared the initial outline? 14:48:12  
13 A. I did. 14:48:14  
14 Q. And did you prepare that before having seen any 14:48:16  
15 internal company documents? 14:48:18  
16 A. No, I didn't. 14:48:20  
17 Q. So can you explain to me how you prepared the 14:48:24  
18 outline? 14:48:24  
19 A. Yes. First of all, I took some major themes that 14:48:28  
20 had come from the Surgeon General's Report, and so 14:48:32  
21 had those kind of in my head. Then I reviewed a 14:48:38  
22 number of documents, I don't know, a large number of 14:48:40  
23 documents. 14:48:42  
24 Q. Those would be documents provided to you by 14:48:42  
25 Roberta? 14:48:44

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1 A. These would be tobacco industry documents provided 14:48:46  
2 to me by Roberta, Tara, Gary, et cetera, and I made 14:48:54  
3 notes on these. At some point, I saw some themes 14:49:00  
4 emerging from the documents and began to put that 14:49:06  
5 into an outline. 14:49:08  
6 So then I went back, I had my outline, I 14:49:12  
7 went back and more or less put particular documents 14:49:18

8           that I thought were supportive of particular areas           14:49:22  
9           in the outline. It's not exact; these are working           14:49:30  
10          documents.           14:49:30  
11 Q.   And if a document didn't support one of the themes           14:49:36  
12          that you developed, you didn't summarize it; is that           14:49:38  
13          correct?  
14                   MS. WALBURN: Objection; misstates           14:49:40  
15          testimony.           14:49:40  
16                   THE WITNESS: Yeah, I didn't say that.           14:49:42  
17          And, in fact, there are documents that don't support           14:49:46  
18          my headings that are listed under here, too.           14:49:52  
19 BY MS. JOHNSON:  
20 Q.   Can you give me an example of what those might be?           14:49:54  
21 A.   Sure.           14:49:54  
22 Q.   When you say documents that don't support your           14:50:20  
23          heading, you mean you put them in the wrong place or           14:50:22  
24          they're not consistent with the point you're           14:50:24  
25          making?           14:50:26

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1 A.   Are we on a new question?           14:50:32  
2 Q.   I don't know, there was whispering going on.           14:50:36  
3 A.   You had asked me first if -- I can't do two things           14:50:40  
4          at once.           14:50:40  
5                   So you asked me first to find documents,           14:50:42  
6          and I was going to give you an example. And maybe           14:50:46  
7          we can answer your next question. Can we just stick           14:50:50  
8          with one question?           14:50:50  
9 Q.   Tell me what it is that you're looking for because I           14:50:54

10 was confused by the question myself. 14:50:56

11 MS. WALBURN: Well, why don't we just have 14:50:58

12 a new question here. 14:50:58

13 THE WITNESS: Why don't we have a 14:51:00

14 question. 14:51:02

15 BY MS. JOHNSON:

16 Q. Okay. You said that if you came across a document 14:51:04

17 that didn't support your point, you would, in fact, 14:51:08

18 put it in your outline, anyway; is that correct? 14:51:10

19 MS. WALBURN: Objection; asked and 14:51:12

20 answered. 14:51:14

21 THE WITNESS: If I came across a document 14:51:18

22 that wasn't supportive of a point I was making, I 14:51:24

23 put it in, anyway. 14:51:24

24 BY MS. JOHNSON:

25 Q. When you say a document that wasn't supportive of 14:51:26

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1 the point you were making, what do you mean by 14:51:30

2 that? 14:51:30

3 A. What I mean is that there was a tobacco industry 14:51:32

4 document that said something different than that. 14:51:34

5 Q. So the outline is an evenhanded compilation of 14:51:46

6 documents that support your point, as well as 14:51:48

7 documents that do not support your point; is that 14:51:50

8 what you're telling me? 14:51:52

9 A. I really can't address how evenhanded it is. I 14:51:56

10 think it -- I didn't just throw out any documents 14:52:00

11 based on the fact they didn't support my point, if 14:52:04

12 that's what you're asking. 14:52:04

13 I think that these documents that are on 14:52:08  
14 here are representative of the documents that I 14:52:10  
15 read. 14:52:10  
16 Q. And do you know how representative the documents 14:52:14  
17 that you read are of the documents that are 14:52:16  
18 available? 14:52:18  
19 MS. WALBURN: Objection; form. 14:52:20  
20 THE WITNESS: My understanding is that 14:52:24  
21 these are very representative of what was 14:52:28  
22 available. 14:52:28  
23 BY MS. JOHNSON:  
24 Q. And what do you base that understanding on? 14:52:30  
25 A. On the questions I've asked the lawyers. 14:52:34

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1 Q. So based on representations by lawyers, it's your 14:52:38  
2 understanding that the documents you've been 14:52:38  
3 provided are representative samples? 14:52:40  
4 A. Yes, based on my conversations with the lawyers, I 14:52:46  
5 think I have representative samples. 14:52:48  
6 Q. And when you were asking the lawyers to make these 14:52:50  
7 document selections for you, did you say "pull out 14:52:54  
8 documents even if it shows that I'm not right about 14:52:58  
9 one of my outline topics"? 14:53:02  
10 MS. WALBURN: Objection; form. 14:53:02  
11 THE WITNESS: I specifically asked the 14:53:08  
12 lawyers to pull out Tobacco Institute documents that 14:53:16  
13 argued against my point, so I specifically asked 14:53:22  
14 them for those documents. 14:53:24



15 BY MS. JOHNSON:

16 Q. Now you're talking about Tobacco Institute 14:53:26

17 documents. I'm confused. 14:53:28

18 A. Well, you asked me for an example. 14:53:30

19 Q. Okay. 14:53:32

20 A. So, yes, I did ask for documents specifically. I 14:53:40

21 asked for both sides of the issue. 14:53:42

22 Q. And what is one side of the issue? How would you 14:53:46

23 describe documents on one side of the issue? 14:53:48

24 A. I think you can read my major points that I came to 14:53:52

25 from my entire review of the scientific literature 14:53:58

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1 and my research, my background, and the tobacco 14:54:00

2 industry documents. Those are the main points that 14:54:04

3 are underlined. 14:54:04

4 Q. So if there were a tobacco industry document that 14:54:08

5 said "smoking among teens is on the decline," would 14:54:16

6 that be something that the lawyers would have given 14:54:20

7 you? 14:54:20

8 A. Yes. 14:54:20

9 Q. And would that have been something that you would 14:54:22

10 have reviewed? 14:54:24

11 A. Yes. 14:54:24

12 Q. Is that something you would have summarized and put 14:54:26

13 in your document? 14:54:26

14 A. Yes. 14:54:26

15 Q. Because you wanted to put both sides of the story in 14:54:30

16 your document; is that right? 14:54:30

17 MS. WALBURN: Objection; form, asked and 14:54:32

18 answered. 14:54:32

19 THE WITNESS: I want to summarize -- in my 14:54:34

20 outline, I wanted a summary -- or in this working 14:54:38

21 outline, I want a summary of the documents. 14:54:40

22 BY MS. JOHNSON:

23 Q. When you say the documents, do you mean -- which 14:54:44

24 documents do you mean? 14:54:44

25 A. Any documents, either the documents I -- the tobacco 14:54:50

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1 industry documents are the main things on this 14:54:52

2 outline because the other scientific documents, you 14:54:56

3 know, for the most part I know those. 14:54:58

4 Q. But if there were tobacco industry documents that 14:55:02

5 didn't support your views, would the lawyers have 14:55:04

6 given them to you? 14:55:06

7 MS. WALBURN: Objection; asked and 14:55:08

8 answered. 14:55:08

9 THE WITNESS: My understanding is, yes, 14:55:10

10 they would have given them to me and they're on 14:55:12

11 here, there are some on here. 14:55:14

12 BY MS. JOHNSON:

13 Q. There are some on here, correct? 14:55:16

14 MS. WALBURN: Objection; asked and 14:55:18

15 answered. 14:55:18

16 THE WITNESS: There are documents that are 14:55:22

17 not supportive of my views on here. 14:55:24

18 BY MS. JOHNSON:

19 Q. But you have no way of knowing how many more of 14:55:26

20 those might be out there; isn't that right? 14:55:28  
21 MS. WALBURN: Objection; asked and 14:55:28  
22 answered, calls for speculation. 14:55:30  
23 THE WITNESS: I have no idea. 14:55:32  
24 BY MS. JOHNSON:  
25 Q. Now, if the lawyers did give you a document that 14:55:36

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1 didn't support your position, you would still 14:55:40  
2 summarize it and include it in a tobacco industry 14:55:44  
3 document summary? 14:55:44  
4 MS. WALBURN: Objection; asked and 14:55:46  
5 answered. 14:55:46  
6 THE WITNESS: It's highly likely that I 14:55:50  
7 would do that. 14:55:52  
8 BY MS. JOHNSON:  
9 Q. Because that was your procedure? 14:55:52  
10 A. Yes. 14:55:54  
11 Q. Okay. I would like to direct your attention to a 14:55:58  
12 Brown & Williamson document, I believe it's at the 14:56:00  
13 top of your pile of tobacco industry summaries, 14:56:06  
14 document number 660005261-5299. Do you have that? 14:56:16  
15 A. No. 14:56:20  
16 Q. Viceroy Switching Study Analyses? 14:56:24  
17 A. 5261. 14:56:24  
18 Q. Yes. 14:56:26  
19 A. I think you misstated the number. 14:56:28  
20 Q. Do you see that summary in your collection? 14:56:32  
21 A. I do see the summary. 14:56:34  
22 Q. And can you explain to me why in your document 14:56:42

23 summary you failed to mention that this document 14:56:46  
24 notes an increased quitting trend since 1972? 14:56:52  
25 MS. WALBURN: Objection; form. And if 14:56:54

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1 you've got another document in front of you, 14:56:58  
2 Counsel, we'd ask that it be provided. 14:57:00  
3 MS. JOHNSON: It is the document that 14:57:02  
4 appears at page 15 of Defense Exhibit 2507, part of 14:57:06  
5 the Plaintiffs' expert report and supporting 14:57:10  
6 materials. 14:57:12  
7 BY MS. JOHNSON:  
8 Q. Can you explain to me, Professor Perry, since you 14:57:16  
9 were trying to put things that supported your point 14:57:20  
10 and didn't support your point in your summaries, why 14:57:22  
11 when you summarized this document you failed to put 14:57:26  
12 in the point that there was an increased quitting 14:57:32  
13 trend since 1972? 14:57:32  
14 MS. WALBURN: Objection; form. 14:57:34  
15 THE WITNESS: I'm having a hard time. Did 14:57:36  
16 I write anything about quitting trends in my 14:57:38  
17 summary? 14:57:38  
18 BY MS. JOHNSON:  
19 Q. Absolutely not. No, you did not. 14:57:40  
20 A. Because I knew that. 14:57:42  
21 Q. So everything that's in the document summary, 14:57:44  
22 something only goes into the document summary if you 14:57:46  
23 don't already know it? 14:57:48  
24 MS. WALBURN: Objection; form. 14:57:50

1 most part I tried to use quotes from the documents, 14:57:58  
2 exact quotes from the documents, so that I wasn't 14:58:00  
3 misstating them. 14:58:02

4 And, you know, I read through these and 14:58:06  
5 selected the things out based on their relationship 14:58:10  
6 with youth smoking. So a number of the documents 14:58:14  
7 may have had to do with cessation. I didn't focus 14:58:18  
8 on that in my summaries. 14:58:22

9 And before -- I mean, obviously, this is 14:58:24  
10 just a working outline. I mean, before I write 14:58:32  
11 this, I would, or testify, I would go back to the 14:58:34  
12 document. 14:58:34

13 BY MS. JOHNSON:

14 Q. Can you describe for me what your protocol is as you 14:58:38  
15 review an internal company document and identify 14:58:42  
16 which items you deem worthy of putting into a 14:58:48  
17 tobacco industry document summary? 14:58:50

18 MS. WALBURN: Objection; form. 14:58:50

19 THE WITNESS: You want -- can you restate 14:58:58  
20 that? 14:58:58

21 BY MS. JOHNSON:

22 Q. You understand what a protocol is, don't you? 14:59:02

23 A. The method I used? 14:59:08

24 Q. Correct. 14:59:10

25 A. Can you -- 14:59:10

1 Q. As you review an internal tobacco document, what 14:59:14  
2 criteria do you apply to the information in the 14:59:18  
3 document? What's going to go in your summary and 14:59:24  
4 your outline and what you're going to ignore? 14:59:24  
5 MS. WALBURN: Objection; form. 14:59:26  
6 THE WITNESS: I read through the document 14:59:30  
7 for things related to youth and smoking and 14:59:34  
8 advertising, and I write down the things that I find 14:59:38  
9 interesting or relevant to the article, to those 14:59:46  
10 points and to the article. 14:59:48  
11 And, you know, some days I write in great 14:59:52  
12 detail and some days I just write this is a study of 14:59:56  
13 such-and-such. So I wish that I was completely and 15:00:00  
14 utterly consistent, but basically I did my best so 15:00:06  
15 that these would be prompts for me if I needed to go 15:00:10  
16 back to the actual documents. 15:00:14  
17 And so I tried to pick out things related 15:00:16  
18 to youth, smoking, advertising promotions, et 15:00:20  
19 cetera, those things. 15:00:20  
20 BY MS. JOHNSON:  
21 Q. And you said before lunch that you thought that 15:00:24  
22 knowledge was a -- and I'm not sure what phrase you 15:00:28  
23 used -- necessary but not sufficient component of 15:00:32  
24 studying youth behavior? 15:00:38  
25 MS. WALBURN: Objection; misstates the 15:00:40

1 testimony and asked and answered. 15:00:42

2 THE WITNESS: No, I didn't say that. I 15:00:46

3 said knowledge was necessary but not sufficient for 15:00:50

4 behavior change. 15:00:52

5 BY MS. JOHNSON:

6 Q. So when you are -- 15:00:54

7 A. For the most part. It might be for some people, but 15:01:00

8 for the most part. 15:01:00

9 Q. So as part of the outline, when you say you include 15:01:10

10 things about youth issues, would you consider 15:01:14

11 knowledge of youth about the risks of smoking to be 15:01:20

12 something you would include or not include? 15:01:20

13 A. I have a part of the outline on cognitive 15:01:28

14 capabilities, if that's what you're referring to. 15:01:34

15 Q. Okay. Could you go to the second document, the 15:01:36

16 second page behind the first one that we just looked 15:01:38

17 at. 15:01:40

18 A. Okay. 15:01:40

19 Q. And it's TID 2046573692. Do you have that document 15:01:56

20 there? "Preventing Youth Access to Tobacco 15:01:58

21 Products, Philip Morris document." 15:02:00

22 A. Uh-hm.

23 Q. Can you explain to me why your summary of this 15:02:04

24 document says absolutely nothing about the 15:02:10

25 statistics reported on the last two pages, which 15:02:12

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1 show that 98 percent of children surveyed thought 15:02:16

2 smoking was harmful? 15:02:18

3 MS. WALBURN: I'm going to object to the 15:02:20

4 form and the same objection I stated last time, if 15:02:22  
5 you're asking about something that's in the 15:02:24  
6 document, itself, which is not in front of the 15:02:26  
7 witness, then we're going to object to this line of 15:02:28  
8 questioning. 15:02:30  
9 MS. JOHNSON: This document is identified 15:02:32  
10 in Defense Exhibit 2507 at page 99. 15:02:38  
11 MS. WALBURN: That's right, and the 15:02:38  
12 witness doesn't have the document in front of her. 15:02:44  
13 MS. JOHNSON: It is my understanding that 15:02:48  
14 in the agreement upon parties that if a document is 15:02:50  
15 identified in the expert materials that are being 15:02:54  
16 exchanged, that that is fair warning that the 15:02:56  
17 document may be used. That is my understanding, 15:02:58  
18 they're assumed to be pre-designated and available 15:03:00  
19 to be used.  
20 MS. WALBURN: You can use the document, 15:03:02  
21 but you don't have it here. 15:03:04  
22 MR. PERRY WILSON: I don't think we've 15:03:10  
23 established that the witness isn't capable of 15:03:12  
24 answering the question without the document in front 15:03:16  
25 of her. 15:03:16

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1 MS. WALBURN: Which rules do you want to 15:03:18  
2 live by, Counsel, in this deposition? 15:03:18  
3 BY MS. JOHNSON:  
4 Q. I will represent to you, Professor Perry, when you 15:03:20  
5 go back to your bedroom tonight, you can go to 99 of 15:03:24



6       this document that you've never seen before, and you   15:03:26  
7       can go to your computer and look at the summary, and   15:03:28  
8       I will represent to you that on the last two pages   15:03:30  
9       of this document, and I've given you the document   15:03:34  
10       number, there are statistics which report that 98   15:03:36  
11       percent of children surveyed thought that smoking   15:03:38  
12       was harmful.   15:03:40

13               And my question to you, Professor Perry,   15:03:46  
14       is: Why, again, did you choose not to include that   15:03:48  
15       piece of information in your summary of the tobacco   15:03:50  
16       industry document?   15:03:50

17               MS. WALBURN: I'm going to object to the   15:03:52  
18       question on multiple bases. And, again, caution   15:03:54  
19       counsel that if you're asking Professor Perry to   15:03:56  
20       testify about what's in or what's not in the   15:04:00  
21       documents, the standard practice in this litigation,   15:04:06  
22       and I would also state that common courtesy, would   15:04:08  
23       be to provide the witness with a copy of the   15:04:10  
24       document.   15:04:14

25               I don't know how anyone could possibly   15:04:14

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1       answer that question without the document in front   15:04:16  
2       of them.   15:04:16

3               MR. PERRY WILSON: Now you're coaching the   15:04:20  
4       witness.   15:04:20

5               MS. WALBURN: Excuse me, Counsel, do you   15:04:22  
6       want to tell me what rules you want to proceed on in   15:04:26  
7       this deposition?   15:04:26

8               MR. PERRY WILSON: I'm just trying to make   15:04:28

9	sure you follow the rules.	15:04:28
10	MS. WALBURN: I appreciate your efforts.	15:04:30
11	THE WITNESS: I would like, if we're going	15:04:32
12	to talk about things that aren't on here, I'd like	15:04:34
13	to see the documents.	15:04:36
14	BY MS. JOHNSON:	
15	Q. I'm going to represent to you, this is going to be a	15:04:38
16	hypothetical question, I'm going to represent to you	15:04:38
17	what is said in this document. And when you're	15:04:40
18	done, you and counsel can go back and look at the	15:04:42
19	document. And if the document doesn't say what it	15:04:44
20	says, then this whole line of questioning will be	15:04:46
21	for naught.	15:04:48
22	But I'm going to represent to you that	15:04:50
23	this document, which we've already identified, on	15:04:54
24	the last two pages of this document, it is reported	15:04:56
25	that 98 percent of children surveyed thought that	15:05:00

1	smoking was harmful.	15:05:02
2	And I want you to tell me why in the	15:05:04
3	summary that is right before you, which you have a	15:05:08
4	copy of in front of you, why you chose not to	15:05:10
5	include that information in this summary?	15:05:12
6	MS. WALBURN: Again, I'm going to object.	15:05:14
7	I'm also going to ask counsel to please try and stay	15:05:18
8	in your seat while the questioning is proceeding.	15:05:20
9	And I'm going to object and ask that the	15:05:22
10	witness be provided with a copy of the document.	15:05:24

11 BY MS. JOHNSON: 15:05:24

12 Q. Professor Perry, do you have in front of you the 15:05:28

13 tobacco industry document summary that you prepared 15:05:30

14 for preventing youth access to tobacco products, 15:05:30

15 Philip Morris document? 15:05:32

16 A. I do have that, yes. 15:05:32

17 Q. Would you please take a look at that and tell me if 15:05:36

18 anywhere in here you report that 98 percent of 15:05:40

19 children surveyed believe that smoking was harmful 15:05:42

20 to health? Do you see that anywhere on this 15:05:46

21 document that you prepared? 15:05:46

22 MS. WALBURN: Objection; form. 15:05:48

23 THE WITNESS: I do not see that data is on 15:06:00

24 this particular summary, nor do I know that it's in 15:06:06

25 that document because I don't have the document in 15:06:08

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1 front of me. 15:06:08

2 BY MS. JOHNSON:

3 Q. But do you see that reported in your summary? 15:06:16

4 That's my only question. 15:06:16

5 MS. WALBURN: Objection; asked and 15:06:18

6 answered. 15:06:18

7 BY MS. JOHNSON:

8 Q. Do you see that reported in your summary? 15:06:22

9 A. I answered the question. 15:06:22

10 MS. WALBURN: Objection; asked and 15:06:24

11 answered. 15:06:24

12 BY MS. JOHNSON:

13 Q. The answer is, no, it's not in your summary, is it? 15:06:28

14 MS. WALBURN: Objection; asked and 15:06:28  
15 answered, and harassing the witness. 15:06:30  
16 MS. JOHNSON: Well, it's hard for me to 15:06:32  
17 hear asked and answered when you're talking over the 15:06:34  
18 witness. 15:06:34  
19 MS. WALBURN: Well, I'd ask you to try and 15:06:36  
20 control yourself here, Counsel. 15:06:36  
21 BY MS. JOHNSON:  
22 Q. How many brand plans have you written in your 15:06:58  
23 professional career, Professor Perry? 15:07:02  
24 MS. WALBURN: Objection; form.  
25 THE WITNESS: Could you explain what a 15:07:04

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1 brand plan is? 15:07:04  
2 BY MS. JOHNSON:  
3 Q. Why don't you explain what a brand plan is to me. 15:07:08  
4 MS. WALBURN: Objection; form. 15:07:10  
5 THE WITNESS: I can't explain what a brand 15:07:12  
6 plan is. 15:07:18  
7 BY MS. JOHNSON:  
8 Q. Can you explain what R&D strategy plan is? 15:07:24  
9 MS. WALBURN: Objection; form. 15:07:26  
10 THE WITNESS: I know that means research 15:07:30  
11 and development plan, and it generally forecasts 15:07:36  
12 what research is going to be going on in the 15:07:38  
13 future. 15:07:38  
14 BY MS. JOHNSON:  
15 Q. And within a corporation, which document has higher 15:07:44

16 authority, a brand plan or an R&D strategic plan? 15:07:48  
17 MS. WALBURN: Objection; form. 15:07:48  
18 THE WITNESS: I don't really know that 15:07:52  
19 answer. 15:07:52  
20 BY MS. JOHNSON:  
21 Q. You don't know? 15:07:52  
22 MS. WALBURN: Objection; asked and 15:07:54  
23 answered. 15:07:54  
24 BY MS. JOHNSON:  
25 Q. Have you ever worked in the R&D department of a 15:08:00

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1 major corporation? 15:08:00  
2 A. No, I don't think so. I don't think I've ever 15:08:08  
3 worked in a major corporation. 15:08:10  
4 Q. Can you tell me with specificity all of the advanced 15:08:18  
5 degrees that you have earned in the field of 15:08:22  
6 marketing? 15:08:22  
7 A. Sure. I've earned a Ph.D. for being a research 15:08:28  
8 scientist, which include, as I mentioned before, 15:08:32  
9 studying with one of the best social marketing 15:08:34  
10 specialists. 15:08:34  
11 Q. And who is that? 15:08:36  
12 A. Nathan Macaby (phonetic) from Stanford. 15:08:40  
13 Q. Can you name for me the top five commercial 15:08:44  
14 advertising agencies in the United States today? 15:08:46  
15 A. No. I can name one I've worked with, though. 15:08:52  
16 Q. Can you name the top five leading textbooks in the 15:08:56  
17 field of advertising? 15:08:56  
18 A. No, I can't name those textbooks. 15:09:00

19 Q. And are you saying if I go back and look at your 15:09:02  
20 degree, I will see that you have a degree in 15:09:04  
21 commercial advertising? 15:09:06  
22 MS. WALBURN: Objection; asked and 15:09:06  
23 answered and misstates the testimony. 15:09:08  
24 THE WITNESS: No, I said that I had -- you 15:09:10  
25 asked me what advanced degree I had. I said I 15:09:14

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1 worked in the area of mass communication and 15:09:16  
2 marketing and I studied that as part of my doctoral 15:09:20  
3 training. 15:09:20  
4 BY MS. JOHNSON:  
5 Q. Let me ask the question again because my question 15:09:22  
6 is: Can you list for me every advanced degree that 15:09:26  
7 you have in advertising? 15:09:30  
8 MS. WALBURN: Objection; asked and 15:09:32  
9 answered. 15:09:32  
10 THE WITNESS: I think I've answered that. 15:09:38  
11 BY MS. JOHNSON:  
12 Q. Do you have any advanced degrees in advertising? 15:09:38  
13 MS. WALBURN: Objection; asked and 15:09:42  
14 answered. 15:09:42  
15 THE WITNESS: I think I've answered that. 15:09:44  
16 BY MS. JOHNSON:  
17 Q. Is your answer yes or is your answer no? 15:09:44  
18 MS. WALBURN: Objection; asked and 15:09:44  
19 answered. 15:09:44  
20 THE WITNESS: I've answered. 15:09:46

21 MS. WALBURN: Excuse me, I'm not finished 15:09:48  
22 objecting. Asked and answered. 15:09:50  
23 BY MS. JOHNSON:  
24 Q. Would you list for me all the advanced degrees you 15:10:00  
25 have in the field of consumer behavior? 15:10:02

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1 A. Well, I have a Ph.D. in behavioral science, and that 15:10:14  
2 looks specifically at adolescent behavior, 15:10:18  
3 adolescents are consumers. I think that that would 15:10:24  
4 be considered an advanced degree in that area. 15:10:26  
5 Q. And what professional associations in the field of 15:10:30  
6 consumer behavior are you a member of? 15:10:32  
7 A. I'm in the Society of Behavioral Medicine, which 15:10:44  
8 studies consistently consumer behavior. 15:10:46  
9 Q. Are you aware of the field of consumer behavior? 15:10:50  
10 A. I'm sure there is sub-fields in different parts of 15:10:58  
11 consumer behavior, sure. 15:11:00  
12 Q. I'm asking you, are you aware that there is a 15:11:04  
13 discipline out there called consumer behavior? 15:11:06  
14 MS. WALBURN: Objection; asked and 15:11:08  
15 answered, form. 15:11:08  
16 THE WITNESS: I think I answered that. 15:11:10  
17 BY MS. JOHNSON:  
18 Q. And I'm asking you to tell me, in the field of 15:11:14  
19 consumer behavior, to list the professional 15:11:18  
20 associations that are a part of consumer behavior of 15:11:22  
21 which you are a member? 15:11:22  
22 MS. WALBURN: Objection; asked and 15:11:26  
23 answered. 15:11:26

24 THE WITNESS: I've answered. 15:11:28

25 BY MS. JOHNSON:

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1 Q. Could you repeat it for me? 15:11:30

2 MS. JOHNSON: Or could you read it back 15:11:30

3 for me, court reporter? 15:11:32

4 MS. WALBURN: Why don't we have the court 15:11:34

5 reporter read it back. 15:11:34

6 (The requested portion read back.) 15:11:34

7 BY MS. JOHNSON:

8 Q. Professor, other than the Society of Behavioral 15:12:34

9 Medicine, can you list any associations that are a 15:12:40

10 part of the consumer behavior field that you are a 15:12:44

11 member of? 15:12:44

12 A. Well, I guess you don't count my professional work 15:12:52

13 as being associated with consumer behavior. I 15:13:00

14 consider everything, you know, a lot of what I do is 15:13:04

15 consumer behavior analysis. That's what my 15:13:06

16 associates do. So that to the point that we are in 15:13:10

17 associations together, we study consumer behavior. 15:13:14

18 Q. Can you name for me the five leading models of 15:13:18

19 consumer behavior? 15:13:18

20 MS. WALBURN: Objection; form. 15:13:20

21 THE WITNESS: No, I can't. 15:13:22

22 BY MS. JOHNSON:

23 Q. Can you name one? 15:13:24

24 A. No, I can't. 15:13:26

25 Q. Have you ever heard of the "Journal for Consumer 15:13:28



1 Research"? 15:13:30

2 A. I may have heard of it. 15:13:32

3 Q. Have you ever heard of the "Journal of 15:13:38

4 Advertising"? 15:13:38

5 A. Yeah, I've heard of that. 15:13:40

6 Q. Have you heard of the "Journal of Marketing"? 15:13:42

7 A. Yes, I've heard of it. 15:13:44

8 Q. Who are the top leading consumer behavior experts in 15:13:50

9 the country? 15:13:52

10 MS. WALBURN: Objection; form. 15:13:54

11 THE WITNESS: Do you mean consumer 15:13:56

12 behavior generally, or consumer behavior around 15:14:00

13 tobacco? 15:14:00

14 BY MS. JOHNSON:

15 Q. I'm talking now about the field of consumer 15:14:08

16 behavior, which is fairly well defined. And within 15:14:10

17 the field of consumer behavior, can you list for me 15:14:12

18 the top five leading experts of consumer behavior? 15:14:16

19 MS. WALBURN: Objection; form, and asked 15:14:16

20 and answered. 15:14:18

21 THE WITNESS: I believe I've answered 15:14:20

22 that. 15:14:20

23 BY MS. JOHNSON:

24 Q. I didn't hear any names listed. So you don't know 15:14:24

25 any? 15:14:24

1 MS. WALBURN: Objection; misstates the 15:14:26  
2 testimony, and asked and answered. 15:14:26  
3 THE WITNESS: I can't name any particular 15:14:32  
4 names. 15:14:32  
5 BY MS. JOHNSON:  
6 Q. Okay. Now, I may have mixed up when I was asking 15:14:42  
7 you some questions about marketing and advertising 15:14:44  
8 using them interchangeably. 15:14:46  
9 Did you say your advanced degree was in 15:14:48  
10 marketing or advertising? 15:14:50  
11 MS. WALBURN: Objection; asked and 15:14:50  
12 answered. 15:14:52  
13 THE WITNESS: I didn't say that. I said 15:14:56  
14 that during my Ph.D. work I was fortunate enough to 15:15:00  
15 work with one of the leading experts in mass 15:15:04  
16 communication, Nathan Macaby, and particularly in 15:15:08  
17 the area of social marketing, which would include 15:15:10  
18 advertising and marketing practices towards social 15:15:16  
19 aims. 15:15:20  
20 I have, in fact, at some point written a 15:15:24  
21 paper on social marketing. 15:15:26  
22 BY MS. JOHNSON:  
23 Q. What is social marketing? 15:15:30  
24 A. Social marketing is the practice of in a way trying 15:15:38  
25 to sell social ideas, pro-social ideas. 15:15:44

1 Q. Is that different than commercial advertising? 15:15:50

2 A. Commercial advertising tries to sell products. 15:16:00  
3 Q. Okay. So in the field of advertising for commercial 15:16:06  
4 products, can you list for me all of the advanced 15:16:10  
5 degrees that you have earned? 15:16:12  
6 MS. WALBURN: Objection; form, asked and 15:16:16  
7 answered. 15:16:16  
8 THE WITNESS: As part of my doctoral work, 15:16:20  
9 I began looking at cigarette advertising, 15:16:24  
10 particularly examining how cigarette advertising 15:16:28  
11 might affect adolescents to be used in my work. 15:16:32  
12 And with that, I studied with people in 15:16:36  
13 mass communications to do that. So as part of my 15:16:40  
14 Ph.D. work and certainly thereafter I have studied 15:16:46  
15 in that area. 15:16:48  
16 BY MS. JOHNSON:  
17 Q. Okay. I understand that you want to tell me about 15:16:52  
18 the bits and pieces of the programs that you've 15:16:54  
19 worked in. 15:16:54  
20 But my question is: Can you list for me 15:16:58  
21 the advanced degree that is a degree in commercial 15:17:04  
22 advertising? Do you have one of those? 15:17:06  
23 MS. WALBURN: Objection; misstates the 15:17:08  
24 prior testimony, and asked and answered. 15:17:12  
25 THE WITNESS: I think we've gone over 15:17:12

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1 this. 15:17:14  
2 MS. JOHNSON: I guess the record will 15:17:20  
3 reflect that the answer to that question is no. 15:17:28  
4 MS. WALBURN: Well, I think the record 15:17:28

5 will reflect that, once again, you're misstating the 15:17:30  
6 testimony. 15:17:30  
7 BY MS. JOHNSON:  
8 Q. Do you have any advanced degrees in commercial 15:17:32  
9 advertising, Professor Perry? 15:17:32  
10 MS. WALBURN: Objection; asked and 15:17:32  
11 answered on multiple occasions now. 15:17:34  
12 MS. JOHNSON: It has not yet been 15:17:36  
13 answered, and I would like an answer from this 15:17:38  
14 witness. 15:17:38  
15 BY MS. JOHNSON:  
16 Q. Do you have any advanced degrees in commercial 15:17:40  
17 advertising? 15:17:42  
18 MS. WALBURN: Objection; asked -- 15:17:44  
19 BY MS. JOHNSON:  
20 Q. Yes or no? 15:17:44  
21 MS. WALBURN: Objection; asked and 15:17:46  
22 answered. 15:17:48  
23 THE WITNESS: I have an advanced degree in 15:17:50  
24 the behavioral sciences, which includes a study of 15:17:56  
25 mass communications, including advertising and 15:17:58

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1 marketing practices. 15:18:00  
2 BY MS. JOHNSON:  
3 Q. When I asked you this morning what your degree was 15:18:04  
4 in, you said it was in education, and it was very 15:18:06  
5 simple, you got your Ph.D. in education. Professor 15:18:10  
6 Perry -- 15:18:10

7 MS. WALBURN: I'm going to ask that 15:18:12  
8 counsel's gratuitous remarks be stricken. 15:18:16  
9 BY MS. JOHNSON:  
10 Q. Let me ask that as a question then. Professor 15:18:18  
11 Perry, this morning did you not tell me that your 15:18:20  
12 Ph.D. was in education? 15:18:20  
13 MS. WALBURN: Objection; misstating the 15:18:22  
14 testimony from today and asked and answered on 15:18:24  
15 multiple occasions now, and I'd caution counsel not 15:18:28  
16 to harass the witness. 15:18:28  
17 THE WITNESS: I believe this morning I 15:18:32  
18 told you the different kinds of courses I took. I 15:18:34  
19 don't think you ever asked me what part of education 15:18:36  
20 I studied or why I considered myself a behavioral 15:18:40  
21 scientist, et cetera. 15:18:40  
22 I told you at that point that I had 15:18:42  
23 studied mass communications. 15:18:44  
24 BY MS. JOHNSON:  
25 Q. Can you name for me all of the classes that you have 15:18:58

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1 taken in advertising? 15:19:00  
2 A. I took a class -- actually, almost all my classes 15:19:06  
3 that had to do with adolescents were one-on-one 15:19:10  
4 classes, and this class was with Nathan Macaby, 15:19:14  
5 after which I did quite a bit of work with Jerry 15:19:18  
6 Klein here at the University of Minnesota before he 15:19:20  
7 died. 15:19:22  
8 Q. Were those classes or when you say one-on-one -- 15:19:26  
9 A. Yeah, they're classes. I got credits for them, as I 15:19:32

10 did with, I mean, Stanford fortunately is a very 15:19:34  
11 advanced university. 15:19:36  
12 Q. And other than those two individuals, what formal 15:19:42  
13 commercial advertising classes have you taken? 15:19:46  
14 Because we went through your course work this 15:19:48  
15 morning, and I don't recall hearing any. 15:19:50  
16 MS. WALBURN: Objection; you're misstating 15:19:52  
17 the testimony. And I'm sure it's unintentional, 15:19:54  
18 Counsel, but you are cutting off the witness. 15:19:56  
19 THE WITNESS: Well, first of all, those 15:19:58  
20 are two classes and that was embedded in work we 15:20:02  
21 were doing. We also have a class here within our 15:20:08  
22 division that I have at least partially taught at 15:20:12  
23 some point on mass communication that involves, you 15:20:18  
24 know, advertising and so forth. 15:20:20  
25 And John Finnegan, who has a degree in 15:20:22

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1 journalism and mass communication, is a close 15:20:26  
2 colleague of mine and teaches that class. 15:20:28  
3 BY MS. JOHNSON:  
4 Q. Other than advertising for tobacco and alcohol, can 15:20:30  
5 you list for me all the product categories for which 15:20:32  
6 you have done extensive study? 15:20:36  
7 A. Tobacco is the only area I've done extensive study. 15:20:40  
8 Q. Thank you. The first line of your expert report 15:20:56  
9 says you are a behavioral scientist. As a 15:20:58  
10 scientist, would you agree with me that it's 15:21:02  
11 important to have definitions about what you're 15:21:06

12 studying? 15:21:08

13 MS. WALBURN: Objection; form. 15:21:10

14 THE WITNESS: I don't know, it depends on 15:21:14

15 what we're talking about. So sometimes they're 15:21:18

16 necessary, sometimes they are not. 15:21:18

17 BY MS. JOHNSON:

18 Q. Isn't it a fundamental tenet of science that in 15:21:22

19 order for one scientist to speak with another or for 15:21:26

20 you to make inferences from data that you need to 15:21:30

21 have some definitions of what you're talking about? 15:21:34

22 A. Not always up front. 15:21:36

23 Q. At some point? 15:21:36

24 A. We're talking hypothetically; I really can't answer 15:21:42

25 that question. 15:21:42

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1 Q. Okay. Well, let's take an example. Let's suppose a 15:21:46

2 woman walks into the room and one person looks at 15:21:48

3 her and says, "Well, she's wearing a skirt that's 15:21:50

4 short," and another person looks at her and says, 15:21:52

5 "She's wearing a skirt that's long." 15:21:54

6 Unless you have a definition, you really 15:21:56

7 don't know much about the length of that skirt. 15:21:58

8 Isn't that a classic textbook science 101 15:22:02

9 explanation for the importance of definitions when 15:22:06

10 you're dealing with science? 15:22:08

11 MS. WALBURN: Objection; form. 15:22:08

12 THE WITNESS: You know, my own sense on 15:22:14

13 that is that's aesthetics. That has nothing to do 15:22:16

14 with definitions. That two people may look at the 15:22:20

15 skirt I'm wearing and say that's too long and 15:22:22  
16 someone else say that's too short, she should have 15:22:26  
17 that down to her ankles, I'm not sure that's a very 15:22:30  
18 good example of definition. 15:22:32  
19 BY MS. JOHNSON:  
20 Q. You give me a better example. 15:22:32  
21 MS. WALBURN: Objection; form. 15:22:34  
22 THE WITNESS: I really don't have that off 15:22:36  
23 the top of my head. 15:22:38  
24 BY MS. JOHNSON:  
25 Q. Well, you mentioned earlier today that the 15:22:40

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1 definition of adolescent is very fluid and that that 15:22:42  
2 presents a problem to people studying the issue of 15:22:44  
3 smoking among youth; isn't that correct? 15:22:46  
4 MS. WALBURN: Objection; misstates the 15:22:48  
5 testimony. 15:22:48  
6 THE WITNESS: I don't think I said that 15:22:48  
7 that's a problem. I said that the definition is 15:22:50  
8 fluid among researchers, and we're talking about 15:22:56  
9 particular exact cutoffs of years. So I really 15:23:04  
10 don't think that's what I said at all. 15:23:06  
11 BY MS. JOHNSON:  
12 Q. The record will reflect the answer. I'm looking now 15:23:12  
13 at your C.V. and you have listed a number of 15:23:12  
14 individuals who you have had as graduate students; 15:23:20  
15 is that right? 15:23:20  
16 A. Sure. Can I look at my C.V.? 15:23:26



17 Q. And when you are -- what is your position vis-a-vis, 15:23:32  
18 you're an advisor, is that correct, and these are 15:23:34  
19 your advisees? 15:23:36  
20 A. Well, they're two different -- well, there's three 15:23:40  
21 different levels. One, you can be their academic 15:23:42  
22 advisor, that is, you can advise them on what 15:23:46  
23 courses they can take. 15:23:48  
24 Two, you could be their thesis advisor, 15:23:50  
25 which means you work on their thesis with them and 15:23:54

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1 in charge of that. Three, you could be their thesis 15:23:56  
2 committee member or thesis reader, which means 15:24:00  
3 you're not helping them direct their research but 15:24:04  
4 you're sitting on their committee. 15:24:04  
5 Q. And what role -- you served as a major advisor for 15:24:10  
6 Mary Codd; isn't that correct? 15:24:14  
7 A. I served as her dissertation advisor. 15:24:18  
8 Q. So is your C.V. incorrect when you footnote and say 15:24:22  
9 you were her major advisor? 15:24:24  
10 A. No, I don't think so. 15:24:24  
11 Q. So which is it? 15:24:26  
12 A. Well -- 15:24:28  
13 MS. WALBURN: Objection; form. 15:24:28  
14 THE WITNESS: Sometimes these get blurred, 15:24:34  
15 things get blurred as to what they were. 15:24:36  
16 BY MS. JOHNSON:  
17 Q. She finished in '96. Do you recall Mary Codd? 15:24:42  
18 A. Sure. I recall Mary Codd and I worked a long time 15:24:46  
19 with her on her dissertation over Christmas. 15:24:48

20 Q. What was her dissertation topic? 15:24:50  
21 A. On cigarette smoking in Ireland, among Irish girls. 15:24:56  
22 Q. In what capacity did you relate to Ms. Codd 15:24:58  
23 vis-a-vis her dissertation, was it as a major 15:25:02  
24 advisor or something else? 15:25:04  
25 A. I related to her as her dissertation advisor. 15:25:06

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1 Q. And what are the responsibilities of a dissertation 15:25:10  
2 advisor? 15:25:10  
3 A. To make sure she gets her dissertation done and make 15:25:14  
4 sure that it's acceptable to the University of 15:25:16  
5 Minnesota. 15:25:16  
6 Q. And so if you found something in her dissertation 15:25:20  
7 that was unacceptable, it would be your 15:25:20  
8 responsibility to bring that to her attention and 15:25:22  
9 change it; isn't that right? 15:25:24  
10 A. Yes. 15:25:24  
11 Q. Okay. When your expert statement says that you will 15:25:40  
12 testify with respect to adolescent cigarette 15:25:42  
13 smoking, how do you define cigarette smoking? 15:25:44  
14 MS. WALBURN: Objection; form. 15:25:48  
15 THE WITNESS: Cigarette smoking is 15:25:52  
16 actually from nonsmoking to first puffs to regular 15:26:04  
17 smoking. 15:26:04  
18 BY MS. JOHNSON:  
19 Q. What was the first category? 15:26:10  
20 A. Nonsmoking. 15:26:12  
21 Q. And the second? 15:26:12

22 A. First puffs, onset. 15:26:18  
 23 Q. And the third? 15:26:20  
 24 A. Regular smoking. 15:26:24  
 25 Q. And how do you define regular smoking? 15:26:26

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1 A. It depends on the definition -- it depends on the 15:26:34  
 2 age group. 15:26:34  
 3 Q. What are the age groups for which you have differing 15:26:42  
 4 definitions of regular smoking? 15:26:46  
 5 A. Early adolescence versus middle adolescence. 15:26:48  
 6 Q. What years are early adolescence? 15:26:52  
 7 A. Generally I think of it as 11 to 14, 10 to 13, 15:27:00  
 8 somewhere around there. 15:27:00  
 9 Q. And what was the next level? 15:27:02  
 10 A. Middle adolescence. 15:27:04  
 11 Q. And is there a third level? 15:27:06  
 12 A. A later adolescence. 15:27:08  
 13 Q. Is there a fourth level? 15:27:08  
 14 A. Post adolescence, and that's adulthood. 15:27:14  
 15 Q. Okay. And what is the age range for middle 15:27:16  
 16 adolescence? 15:27:18  
 17 A. Approximately 14 or 15 to 17, 18. 15:27:22  
 18 Q. And later adolescence? 15:27:24  
 19 A. Generally 18 and over to 20. 15:27:30  
 20 Q. And post adolescence? 15:27:30  
 21 A. In general, 21 and over. 15:27:36  
 22 Q. What is the definition of regular smoking for early 15:27:38  
 23 adolescence? 15:27:40  
 24 A. You know, it really depends on who you're talking 15:27:48

25 with and which survey is doing it. 15:28:00

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1 Q. So there is no accepted definition of regular 15:28:06  
2 smoking in the age range of 10 to 14; is that 15:28:10  
3 correct?

4 A. The office on smoking and health tends to use have 15:28:16  
5 you had a cigarette in the past month. Generally, 15:28:20  
6 we've used have you had a cigarette in the past week 15:28:22  
7 as an indicator of regular smoking. 15:28:26

8	And so that's as much as my memory can --	15:28:38
9	I'm not 100 percent sure on the office on smoking	15:28:40
10	and health.	15:28:42

11 Q. So when you refer to regular smoking among 15:28:44  
12 adolescents, you're referring possibly to people who 15:28:48  
13 had one cigarette; is that right? 15:28:50

14 MS. WALBURN: Objection; form. 15:28:52

15	THE WITNESS: When we write reports about	15:28:58
16	how many regular smokers there are, I think -- I	15:29:02
17	believe most of what I've written, personally, uses	15:29:06
18	past week.	15:29:10

19	And I think in the Surgeon General's	15:29:12
20	Report we were very careful to break out exactly	15:29:14
21	what we were talking about, whether it was ever	15:29:18
22	smoking, past month, or daily smoking.	15:29:22

23                   So in order to get -- in order to be clear           15:29:28

24           on the definitions, we didn't really use that term           15:29:32

25           regular smoking very much in the Surgeon General's       15:29:36

1 Report. 15:29:36

2 BY MS. JOHNSON:

3 Q. And why did you think that it was so important to 15:29:40

4 break these out in the Surgeon General's Report and 15:29:42

5 then decide not to even use the term? 15:29:44

6 MS. WALBURN: Objection; form, and 15:29:48

7 misstates the testimony. 15:29:52

8 THE WITNESS: Can you restate the 15:29:58

9 question? 15:29:58

10 BY MS. JOHNSON:

11 Q. You said it was very important to us in writing the 15:29:58

12 Surgeon General's Report that we break out and 15:30:02

13 differentiate one cigarette in the last month versus 15:30:04

14 one cigarette in the last week because these are 15:30:06

15 different criteria for the definition of a regular 15:30:10

16 smoker, and that you eventually decided not to even 15:30:12

17 use the term regular smoker. 15:30:14

18 And I'm asking you why was it important to 15:30:16

19 you, as a senior scientific editor of the '94 15:30:20

20 Surgeon General's Report, to make these 15:30:22

21 distinctions? 15:30:22

22 A. I think I misstated. In the epidemiology chapter, 15:30:28

23 where you really want to know how much everybody is 15:30:32

24 smoking, we were very careful on that. 15:30:34

25 If you look at the later chapters, 15:30:38

1 different people defined it as regular, either as 15:30:42  
2 past week or past month. 15:30:44  
3 And so there might be some, you know, some 15:30:50  
4 difference in the exact definitions on that. And 15:30:54  
5 that's where you have to really look carefully to 15:30:56  
6 compare the data. 15:30:58  
7 So we actually, I think, if you look later 15:31:00  
8 in the Surgeon General's Report, the word regular 15:31:02  
9 was used, just in the epi chapter when we were 15:31:06  
10 presenting the data we were very careful that people 15:31:08  
11 knew what that data meant. 15:31:10  
12 Q. Now, in the epi chapter, what terminology did you 15:31:14  
13 use to describe a regular smoker? I'm confused. 15:31:18  
14 A. Can I look at the Surgeon General's Report just to 15:31:22  
15 check what we did? Because I'm not sure in the epi 15:31:30  
16 chapter we used regular at all. 15:31:34  
17 Q. Rather than have you read the entire chapter as we 15:32:28  
18 sit here, let's move on to another question. 15:32:34  
19 Did I understand you to say that when you 15:32:36  
20 really cared about who was smoking you made very 15:32:40  
21 careful distinctions between a person who smokes on 15:32:46  
22 a daily basis and a person who has had a cigarette 15:32:48  
23 in the last month? 15:32:48  
24 MS. WALBURN: Objection; misstates the 15:32:52  
25 testimony. 15:32:52

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1 THE WITNESS: No, I didn't really say that 15:32:54  
2 at all. I said that in the epi chapter we were very 15:32:56

3 careful when presenting prevalence or incidence data 15:33:00  
4 that we defined that. 15:33:02  
5 But as I just glanced through, we weren't 15:33:04  
6 that careful. We did some things that just said 15:33:08  
7 regular smoking. And I don't believe I said daily 15:33:10  
8 smoking at all in my testimony yet. 15:33:14  
9 BY MS. JOHNSON:  
10 Q. So you weren't as careful as you thought you were, 15:33:20  
11 even in the epi chapter of the Surgeon General's 15:33:24  
12 Report?  
13 A. Well, because different, you know, we were taking 15:33:26  
14 data from a lot of different sources, and so regular 15:33:30  
15 gets defined by the individual researcher. 15:33:34  
16 The National Cancer Institute puts out 15:33:36  
17 guidelines, but those are not always followed. So 15:33:42  
18 different -- so you try to summarize that data and 15:33:46  
19 you try to be careful about what you say about that 15:33:48  
20 data. 15:33:48  
21 Q. We started this conversation with your telling me 15:34:00  
22 that regular smoking had a different definition, 15:34:02  
23 depending upon whether the individual was in the 15:34:06  
24 phase of early adolescence, middle adolescence, 15:34:10  
25 later adolescence, or was post adolescent. 15:34:12

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1 What is the definition that you used in 15:34:14  
2 preparing your expert report when you referred to 15:34:16  
3 smoking? 15:34:18  
4 MS. WALBURN: Objection; form. 15:34:24  
5 THE WITNESS: You mean when I said regular 15:34:30

6 smoking or when I just said smoking? 15:34:32

7 BY MS. JOHNSON:

8 Q. Well, let's take it at the beginning, and you start 15:34:36

9 off by saying you were going to talk about 15:34:36

10 adolescent cigarette smoking, and I asked you, when 15:34:40

11 I raised the question, what definition of cigarette 15:34:48

12 smoking you were using in that sentence? 15:34:52

13 A. I'm going to use all of the definitions. I'm going 15:34:56

14 to use the available data. I'll be as exact as I 15:35:02

15 can. So I may at times be using data in which 15:35:06

16 regular smoking is past week, and it may also for 15:35:12

17 younger kids be past month. 15:35:14

18 Q. What is the definition that you will be using for 15:35:20

19 regular smoking of middle adolescents? 15:35:22

20 MS. WALBURN: Objection; form. Using 15:35:24

21 when? 15:35:26

22 THE WITNESS: I don't know. 15:35:34

23 BY MS. JOHNSON:

24 Q. You don't know what definition of regular smoking 15:35:38

25 you're using in your expert report when you're 15:35:42

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1 referring to middle adolescents? 15:35:44

2 MS. WALBURN: Objection; changing the 15:35:46

3 question and misstating the testimony. 15:35:46

4 THE WITNESS: You said when, and so I 15:35:48

5 thought you were referring to the future, in which I 15:35:52

6 can't predict that. 15:35:52

7 BY MS. JOHNSON:



8 Q. I was responding to your comment to me that you 15:35:54  
9 intended to use all of them. And I'm just asking 15:35:56  
10 for a little more specificity because it looks to me 15:36:00  
11 like we're looking at kids from age 10 to 25. 15:36:04  
12 And I'm just trying to get some 15:36:06  
13 clarification about the definitions that you were 15:36:12  
14 using first in the first instance in this 16-page 15:36:18  
15 expert report which you have provided us. And I'm 15:36:20  
16 trying to get off the first page. 15:36:22  
17 And on the first page I asked you, you're 15:36:26  
18 going to testify with respect to adolescent 15:36:28  
19 cigarette smoking, and I'm asking you now when you 15:36:30  
20 say cigarette smoking, are you referring -- what 15:36:32  
21 kind of cigarette smoking are you referring to? 15:36:42  
22 MS. WALBURN: I'm going to object to the 15:36:42  
23 form. I mean, I can't even count the number of 15:36:44  
24 compounds there are in this extended colloquy and 15:36:44  
25 question. So I would ask that you state a question 15:36:46

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1 in a form that can be answered. 15:36:46  
2 BY MS. JOHNSON:  
3 Q. Did you write this expert report? 15:36:52  
4 A. Of course I wrote it. 15:36:52  
5 Q. Okay. When you wrote this expert report and you 15:36:56  
6 typed in the words, "Dr. Perry will testify with 15:37:00  
7 respect to adolescent cigarette smoking," what ages 15:37:02  
8 and what type of smoking did you intend for us to 15:37:08  
9 know about? 15:37:08  
10 A. Okay. 15:37:10

11 MS. WALBURN: Objection; asked and 15:37:10  
12 answered, and compound question. 15:37:12  
13 THE WITNESS: Okay. Ages. I may talk 15:37:22  
14 about any age. But specifically in adolescents I 15:37:26  
15 will be mostly talking about ages 10 to 20 with an 15:37:32  
16 emphasis on those under 18. But really that whole 15:37:38  
17 range of adolescents. I may be talking up to age 25 15:37:42  
18 just because there's some things that occur at that 15:37:46  
19 point. 15:37:46  
20 BY MS. JOHNSON:  
21 Q. And when you talk about age 25, will you still refer 15:37:50  
22 to them as adolescents? 15:37:50  
23 MS. WALBURN: Objection; form. 15:37:52  
24 THE WITNESS: Most likely not. 15:37:58  
25 BY MS. JOHNSON:

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1 Q. So when it says in your expert report you're going 15:38:00  
2 to talk about adolescent cigarette smoking, you're 15:38:04  
3 really going to talk about adolescent cigarette 15:38:06  
4 smoking and adult cigarette smoking? 15:38:08  
5 MS. WALBURN: Objection; asked and 15:38:10  
6 answered. 15:38:10  
7 THE WITNESS: No, I'm going to be talking 15:38:14  
8 about adolescent cigarette smoking. It might have 15:38:16  
9 implications for when they're 25 years old. 15:38:18  
10 BY MS. JOHNSON:  
11 Q. Are you going to talk about individuals over the age 15:38:22  
12 of 20 and what influences their decisions about 15:38:26

13 smoking? 15:38:26

14 A. I don't know at this point. That's not what I was 15:38:36

15 anticipating talking about. 15:38:36

16 Q. I'm only referring now to your expert report. Does 15:38:40

17 your expert report cover -- and by your expert 15:38:44

18 report, I mean your expert report and the literature 15:38:46

19 that you rely on -- does this cover individuals who 15:38:50

20 are 20 years or older? 15:38:52

21 A. Yes, it does. 15:38:54

22 Q. Okay. Can you show me where it does? 15:38:56

23 A. Well, for example, I say that most people begin to 15:39:18

24 smoke by age 18. 15:39:18

25 Q. What page are you referring to? 15:39:20

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1 A. Page 3, one of my major points, a phenomenon which 15:39:26

2 tobacco companies were well aware of and studied. 15:39:28

3 Now, I may refer to 25 years old because 15:39:30

4 those are referred to in tobacco industry documents, 15:39:32

5 and virtually no one starts after age 25. Documents 15:39:36

6 say that, so I might say that. 15:39:38

7 So for me to rule out that I'm going to 15:39:42

8 say anything about anybody over 20 when your 15:39:44

9 documents have things in them over 20, I don't want 15:39:48

10 to restrict myself to that. 15:39:52

11 So most people begin to smoke by age 18, 15:39:56

12 but that may -- there may be things about people age 15:39:58

13 25 related to this point that I might want to bring 15:40:02

14 into my testimony. 15:40:02

15 Q. Do you consider anyone over the age of 18 to be 15:40:08

16 properly referred to as an adolescent? 15:40:12  
17 MS. WALBURN: Objection; asked and 15:40:14  
18 answered. 15:40:14  
19 THE WITNESS: As I said before, 18 to 20 I 15:40:18  
20 consider late adolescence. 15:40:20  
21 BY MS. JOHNSON:  
22 Q. Then on page 4 when you begin to talk about teens, 15:40:30  
23 what age group are you referring to there? 15:40:34  
24 A. What line are you? 15:40:36  
25 Q. The very first line. Are teens, as a group span, a 15:40:42

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1 smaller age range than the definition of adolescents 15:40:46  
2 that you intend to use in your testimony in this 15:40:48  
3 case? 15:40:50  
4 A. Yes, it does. Those are underage adolescents. 15:40:52  
5 Q. And by underage what do you mean? 15:40:56  
6 A. Under legal age, under 18. 15:41:00  
7 Q. So when you use the word teens, you were referring 15:41:04  
8 to people under the age of 18? 15:41:06  
9 MS. WALBURN: Objection; form. 15:41:08  
10 THE WITNESS: When I used the word teens 15:41:10  
11 in this sentence, which comes from the Surgeon 15:41:12  
12 General's Report, I'm referring to that. I want to 15:41:14  
13 give myself leeway because 19 is still a teen. 18 15:41:20  
14 is still a teen. 15:41:22  
15 I may at some point refer to a teen that 15:41:26  
16 is 18 or 19. I won't refer to a teen that's 20. 20 15:41:30  
17 is out. 15:41:32

18 BY MS. JOHNSON:

19 Q. But 20 is still an adolescent? 15:41:34

20 A. 20 is still in late adolescence. 15:41:36

21 Q. And it's legal in the State of Minnesota for some 15:41:38

22 adolescents, then, to smoke cigarettes, isn't it? 15:41:42

23 A. It is legal in the State of Minnesota to sell to 15:41:46

24 those 18 and over, yes. 15:41:50

25 Q. And it is legal in the State of Minnesota for some 15:41:52

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1 teens to smoke; isn't that correct? 15:41:54

2 A. It's legal in Minnesota for 18 and 19 year olds to 15:41:58

3 smoke. 15:41:58

4 Q. Now, when you excerpt phrases from internal tobacco 15:42:12

5 company documents that use either the word 15:42:16

6 adolescent or teen, do you know what definition the 15:42:22

7 author of that document is using? 15:42:24

8 A. I don't know precisely what they're using, but I 15:42:40

9 would hazard a very big guess that it's underage, 15:42:46

10 under 18. 15:42:46

11 Q. But that would be a guess, wouldn't it? 15:42:50

12 A. It's a pretty educated guess. 15:42:52

13 Q. But it's still a guess, isn't it? 15:42:54

14 A. Well, most anything looking at what someone writes, 15:42:58

15 you would have some small margin. I'd be about 99 15:43:04

16 percent sure they're talking about underage people. 15:43:06

17 Q. So they're using a different definition of teens 15:43:10

18 than what you and everyone else in the room might 15:43:14

19 refer to as teens; is that right? 15:43:16

20 MS. WALBURN: Objection; misstates 15:43:18

21 testimony, asked and answered. 15:43:20  
22 THE WITNESS: I doubt that they're using a 15:43:24  
23 different -- I doubt that they're referring to 18 15:43:26  
24 and 19 year olds as teenagers. And even if they 15:43:32  
25 were, they're including the whole range of 15:43:34

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1 teenagers. 15:43:36  
2 BY MS. JOHNSON:  
3 Q. I'm just trying to understand the definitions. To 15:43:38  
4 me, if someone is 19, they're a teenager. You told 15:43:42  
5 me that when you use the word teens, you mean 15:43:44  
6 someone under the age of 18. 15:43:46  
7 Therefore, when I refer to a teen, I may 15:43:50  
8 mean someone older than the teen that you refer to 15:43:54  
9 because we have different definitions? 15:43:56  
10 MS. WALBURN: Objection; form, multiple 15:43:58  
11 components to that question, and misstates the prior 15:44:02  
12 testimony. 15:44:02  
13 THE WITNESS: I said, and I thought I was 15:44:06  
14 very clear, that on the top of page 4 when I said 15:44:10  
15 nearly 1 million teenagers, teens each year, or 15:44:14  
16 about 3,000 teens each day begin to smoke cigarettes 15:44:18  
17 that that came from the Surgeon General's Report, 15:44:18  
18 that that meant under 18 for that document. 15:44:22  
19 I also said I wanted to have leeway to be 15:44:26  
20 able to call people 18 and 19 teens, that for the 15:44:30  
21 most part I'm referring to underage teenagers, under 15:44:34  
22 age 18, but that that may or may not be consistent 15:44:38



1 "Dr. Perry's review of tobacco industry documents 15:56:40  
2 show that tobacco companies view adolescents as the 15:56:42  
3 major source of replacement smokers." 15:56:42  
4 Do you see where I'm reading that? 15:56:44  
5 A. Yes. 15:56:44  
6 Q. Now, in that sentence, when you use the word 15:56:48  
7 "adolescents," could that include people age 19? 15:56:50  
8 A. No. 15:56:58  
9 Q. It could not? 15:56:58  
10 A. Well, it could, but in this case I'm really 15:57:02  
11 referring to 18 and under. 15:57:06  
12 Q. Now I'm confused because you told us before the 15:57:16  
13 break that adolescents include people age 18, 19 and 15:57:20  
14 20. Did I get that wrong? 15:57:22  
15 MS. WALBURN: Objection; form. 15:57:22  
16 THE WITNESS: I think you did get it 15:57:26  
17 wrong. I defined adolescents. And then I said for 15:57:30  
18 the most part in this report I'm referring to 15:57:32  
19 underage adolescents, young and middle adolescents. 15:57:40  
20 However, I might be -- I might at some 15:57:44  
21 point refer to 18, 19 and 20 years olds just like in 15:57:48  
22 that example I gave you I might refer to 25 year 15:57:50  
23 olds. Now I won't refer to 25 year olds as 15:57:54  
24 adolescents, but they may be referred to. 15:57:58  
25 BY MS. JOHNSON:



1 Q. But I don't know from reading this sentence whether 15:58:06  
2 you are referring to the first definition of 15:58:06  
3 adolescents that you gave us, which takes us up to 15:58:10  
4 age 20, or whether this is a different version or 15:58:14  
5 definition of adolescents that encompasses only 15:58:18  
6 those under the legal age to smoke? 15:58:20  
7 MS. WALBURN: Objection; form, and asked 15:58:24  
8 and answered. 15:58:24  
9 MS. JOHNSON: I'm going to try to wrap up 15:58:26  
10 this deposition today, and I appreciate your 15:58:28  
11 objecting to every question I have, but it would 15:58:30  
12 speed things along if you don't have speaking 15:58:32  
13 objections. 15:58:34  
14 And I understand that all objections are 15:58:34  
15 preserved if you just say objection, and that will 15:58:38  
16 speed things up considerably. 15:58:40  
17 MS. WALBURN: Number one, I'm not 15:58:42  
18 objecting to all questions. Number two, if you'd 15:58:44  
19 ask proper questions, I wouldn't have to object. 15:58:46  
20 And number three, I'm not making speaking 15:58:48  
21 objections, so you can proceed. 15:58:50  
22 BY MS. JOHNSON:  
23 Q. There's a question pending and you may answer it. 15:59:06  
24 A. Can you repeat the question, I lost it? 15:59:08  
25 MS. JOHNSON: Could you repeat the 15:59:10

1 question. 15:59:10

2 (The requested portion read back.) 15:59:10

3 MS. WALBURN: My objection is form and 15:59:36

4 asked and answered. 15:59:38

5 THE WITNESS: And what I'd like to say is 15:59:42

6 I believe from my paragraph you should know that I'm 15:59:46

7 referring to underage adolescents. I say shows that 15:59:54

8 the industry studied and examined the prevalence of 15:59:56

9 smoking for underage youth because such smoking was 15:59:58

10 viewed as critical to the future of the company. 16:00:00

11 Dr. Perry's review, as you read that 16:00:02

12 sentence. The industry documents point out that 16:00:04

13 most people begin to smoke by age 18, therefore the 16:00:08

14 future prevalence of smoking and absolute number 16:00:10

15 depends on how many young people. So that again 16:00:14

16 says by age 18. 16:00:18

17 So I think that's -- you picked one 16:00:20

18 sentence out of an entire paragraph in which I'm 16:00:22

19 talking about underage youth. So I think I was 16:00:26

20 pretty clear in that particular sentence. 16:00:30

21 BY MS. JOHNSON:

22 Q. Well, now you've added another wrench into the mix 16:00:34

23 because now you've introduced the whole concept of 16:00:38

24 young people, which you just read in the next 16:00:40

25 sentence. 16:00:40

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1 MS. WALBURN: Objection; form. 16:00:44

2 BY MS. JOHNSON:

3 Q. What is your definition of young people, Professor 16:00:56

4 Perry?

5 MS. WALBURN: Objection; form. 16:00:58

6 THE WITNESS: My definition in this 16:01:04

7 sentence is under 18. And for the most part, I 16:01:10

8 refer to young people as -- when I'm referring to 16:01:16

9 young people, I'm referring to young or early and 16:01:20

10 middle adolescents for the most part, but there may 16:01:24

11 be cases where I refer to a 5th grader as a young 16:01:30

12 person. 16:01:30

13 BY MS. JOHNSON:

14 Q. And there may be cases where you refer to a 19 year 16:01:34

15 old as a young person, too; isn't that possible? 16:01:36

16 MS. WALBURN: Objection; asked and 16:01:36

17 answered. 16:01:38

18 THE WITNESS: It's not as likely. 16:01:38

19 BY MS. JOHNSON:

20 Q. But it's possible? 16:01:40

21 A. I'd have to go through the report to see if I did 16:01:44

22 that in this report. 16:01:46

23 Q. Well, here's my question. 16:01:48

24 A. Okay. 16:01:48

25 Q. Let's proceed to the next page. The fourth line 16:01:54

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1 down you now introduce another group of younger 16:01:56

2 adult males and teenagers. Could please tell me 16:02:00

3 what your definition of younger adult males is? 16:02:02

4 A. Well, this -- 16:02:04

5 MS. WALBURN: Objection; form. 16:02:04

6 THE WITNESS: This isn't my definition. 16:02:06

7           This is RJR's definition of younger adult males.           16:02:12

8           I'm just quoting RJR.           16:02:14

9   BY MS. JOHNSON:

10   Q.   What age range is identified within the term younger   16:02:18

11       adult males as used in this sentence?           16:02:20

12   A.   You know, I'd have to look at the document to see   16:02:24

13       what they were referring to as younger adult.           16:02:26

14       Because I've seen all kinds of definitions for           16:02:30

15       younger adult in the industry documents.           16:02:32

16   Q.   So as you sit here today, you don't know if they're   16:02:36

17       talking about 20 year old males, do you?           16:02:38

18                   MS. WALBURN:  Objection; form.           16:02:38

19                   THE WITNESS:  As I sit here today, I would   16:02:42

20       need to look at the document to answer your question   16:02:44

21       as to what do I think they meant by younger adult   16:02:48

22       males.           16:02:48

23   BY MS. JOHNSON:

24   Q.   Well, they say younger adult males and teenagers,   16:02:50

25       does that give you any hint?           16:02:52

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1   A.   Obviously, it gives me a hint.           16:02:56

2   Q.   And what hint does that give you?           16:02:58

3   A.   That younger adult males are not teenagers.           16:03:02

4   Q.   And they would be older than teenagers; isn't that   16:03:04

5       right?           16:03:06

6   A.   Well --           16:03:10

7   Q.   Isn't that right?           16:03:10

8                   MS. WALBURN:  She was -- the witness was   16:03:12

9           trying to answer, and I would appreciate you giving       16:03:14  
10       her a chance to answer.                                       16:03:16  
11                       THE WITNESS: I think the problem here,       16:03:18  
12       which is why I would need to go back to the               16:03:20  
13       document, is whether RJR means teenagers are               16:03:24  
14       underage.   16:03:26  
15                       I mean, we're getting into -- I mean, do       16:03:28  
16       they think teenagers are 18 and 19 year olds, or do       16:03:32  
17       they think young adults are 18 or 19, so I don't       16:03:34  
18       know that without looking at this.                       16:03:36  
19 BY MS. JOHNSON:  
20 Q.   And that's right, you don't know that, do you? And       16:03:38  
21       let's go on to the --                                       16:03:38  
22 A.   I do not --   16:03:40  
23                       MS. WALBURN: Excuse me.                   16:03:42  
24                       MS. JOHNSON: Are you interrupting your       16:03:42  
25       own witness now?   16:03:44

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1                       MS. WALBURN: I'm interrupting you           16:03:46  
2       interrupting this witness, and I would appreciate if       16:03:50  
3       you would demonstrate some common courtesy in this       16:03:52  
4       deposition.   16:03:52  
5 BY MS. JOHNSON:  
6 Q.   So as we sit here today, in your expert report on       16:03:54  
7       page 5, when you excerpt the phrase younger adult       16:03:58  
8       males and teenagers, you really don't know what ages       16:04:00  
9       are being referred to in this document, do you?       16:04:02  
10                      MS. WALBURN: Objection; misstates the       16:04:06  
11       testimony.   16:04:06

12 THE WITNESS: I would like to look at the 16:04:08  
13 document to know the exact ages that RJR is 16:04:14  
14 referring to when they say younger adult males and 16:04:16  
15 teenagers. 16:04:18  
16 BY MS. JOHNSON:  
17 Q. I guess I just presumed you had seen that document. 16:04:26  
18 But let's move on to the next page. 16:04:28  
19 MS. WALBURN: Objection. I'm going to 16:04:30  
20 move to strike that colloquy, and I'm going to 16:04:32  
21 caution counsel to watch the colloquy in this 16:04:34  
22 deposition. 16:04:34  
23 That was what I can only conclude to be a 16:04:38  
24 deliberate misrepresentation of the proceedings and 16:04:42  
25 the testimony in this case. 16:04:42

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1 BY MS. JOHNSON:  
2 Q. When you drafted this document, did you have the 16:04:54  
3 documents that you quoted from before you? 16:04:56  
4 A. I had the documents -- I had my notes before me to 16:05:08  
5 lead me to quotes, then I looked at the document. 16:05:12  
6 They were all right there. 16:05:14  
7 Q. So when you wrote this, you had the document that 16:05:16  
8 you're pulling this quote from in front of you? 16:05:18  
9 A. Yes. 16:05:20  
10 Q. What do you know about teen brand loyalty in 16:05:30  
11 general, not just as it relates to tobacco 16:05:32  
12 products? 16:05:34  
13 A. I can't say much about brand loyalty outside of 16:05:42

14 tobacco products. 16:05:44  
15 Q. On page 6 it says that Dr. Perry will then describe 16:05:52  
16 stages of smoking initiation among children and 16:05:58  
17 adolescents. Now, in this sentence when you refer 16:06:00  
18 to adolescents, what age range are you referring to 16:06:04  
19 in this particular sentence? 16:06:06  
20 A. I'm referring to 10 to 20, yes, the full range of 16:06:14  
21 adolescents in that sentence. 16:06:16  
22 Q. So in this sentence adolescents are now 19; is that 16:06:20  
23 correct? 16:06:20  
24 MS. WALBURN: Objection; misstates the 16:06:22  
25 testimony. 16:06:22

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1 THE WITNESS: I think I said that 16:06:24  
2 adolescents are the full range, young, middle and 16:06:28  
3 older. 16:06:28  
4 BY MS. JOHNSON:  
5 Q. And that would include 19 years old? 16:06:30  
6 A. It may include 20 years old. 16:06:32  
7 Q. And 20 years old in this sentence, okay. Excuse 16:06:36  
8 me? 16:06:36  
9 A. That's what it says. 16:06:38  
10 Q. In the next sentence you tell us that you're going 16:06:40  
11 to describe how teen smokers become adult smokers. 16:06:44  
12 Now, when you refer in this very next sentence to 16:06:46  
13 teen smokers, what age range are you referring to 16:06:48  
14 here? 16:06:50  
15 A. Underage teen smokers. 16:06:52  
16 Q. Can you give me a -- so an age? 16:06:54

17 MS. WALBURN: Is that a question? 16:06:58  
18 BY MS. JOHNSON:  
19 Q. Yes. 16:07:00  
20 A. Say 10 to 18. 16:07:04  
21 Q. Would it include 18 year olds? 16:07:06  
22 A. It may. 16:07:08  
23 Q. Or it may not? 16:07:10  
24 A. It depends what analysis I'm looking at. 16:07:14  
25 Q. On page 6 it says that you're going to talk about 16:07:28

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1 the environmental, developmental, personal, and 16:07:32  
2 behavioral factors that increase the risk of a young 16:07:36  
3 person beginning and continuing to smoke. 16:07:38  
4 Do you see that in the page 6 near the 16:07:40  
5 bottom? 16:07:42  
6 A. Uh-hm. 16:07:42  
7 Q. In this sentence, what age range are you using for 16:07:48  
8 young person? 16:07:50  
9 A. In that case, I may also be including children. So 16:07:56  
10 I'm not sure how young I'd go. It would be 16:07:58  
11 pre-adolescents. 16:08:00  
12 Q. What age would that be? 16:08:02  
13 A. Let's just say 8 years old. But, you know, it's 16:08:08  
14 childhood. It may even be earlier than -- let's 16:08:14  
15 just say childhood, four years old, I'll give myself 16:08:18  
16 some leeway. 16:08:20  
17 Q. So in this sentence, young person means someone ages 16:08:22  
18 4 to 8? 16:08:24



19 A. No, no, 4 to 18. 16:08:24

20 Q. 4 to 18? 16:08:26

21 A. Or maybe 4 to 20. 16:08:28

22 Q. Okay. Which is it? 16:08:30

23 A. Yeah, let's say 4 to 20. 16:08:36

24 Q. Ages 4 to 20. Young person ages 4 to 20. Would you 16:08:42

25 agree that there are many factors that explain 16:08:46

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1 smoking behavior? 16:08:48

2 A. I would agree that there are some known factors that 16:08:58

3 explain smoking behavior. 16:08:58

4 Q. And would you agree with me that some of those known 16:09:02

5 factors include sociodemographic factors? 16:09:04

6 A. Some sociodemographic factors affect onset and 16:09:14

7 continuation of smoking. 16:09:14

8 Q. And one of those sociodemographic factors that 16:09:18

9 affect onset and continuation of smoking is age; 16:09:20

10 isn't that correct? 16:09:22

11 A. Yes, age is related to onset. 16:09:28

12 Q. And another sociodemographic factor is gender; isn't 16:09:32

13 that correct? 16:09:34

14 A. I think right now it's not a factor. I think 16:09:40

15 there's no significant difference in cigarette 16:09:42

16 smoking as of right now, right now between males and 16:09:50

17 females. 16:09:50

18 Q. Was there at one time? 16:09:52

19 A. Yes. 16:09:54

20 Q. And another sociodemographic factor that might 16:09:58

21 increase the risk of a young person's beginning to 16:10:00

22 smoke is socioeconomic status; isn't that correct? 16:10:02  
23 A. Yes. People who were at lower socioeconomic status 16:10:10  
24 are more likely to begin smoking. 16:10:10  
25 Q. And it also says that you're going to talk about 16:10:14

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1 environmental factors that increase the risk of a 16:10:16  
2 young person beginning and continuing to smoke; is 16:10:18  
3 that correct?  
4 A. Yes. 16:10:20  
5 Q. And peer smoking behavior is an environmental factor 16:10:24  
6 that might affect or increase the risk of a young 16:10:28  
7 person beginning to smoke; isn't that correct? 16:10:30  
8 A. Do you want to expand on that? I mean, do you want 16:10:34  
9 to explain what you mean by that? 16:10:36  
10 Q. Have you ever used the term peer smoking behavior? 16:10:40  
11 A. I've used the term peer smoking behavior. 16:10:46  
12 Q. Okay. Then that's all I'm asking you is whether 16:10:48  
13 peer smoking behavior is one of the environmental 16:10:50  
14 factors that increases the risk of a young person 16:10:52  
15 beginning to smoke? 16:10:54  
16 A. If a young person's peers are smoking, then they're 16:11:00  
17 more likely to begin to smoke. 16:11:02  
18 Q. And another environmental factor that might increase 16:11:10  
19 the risk of a young person's beginning to smoke is 16:11:12  
20 normative expectations? 16:11:16  
21 A. Can you define what you mean by normative 16:11:20  
22 expectations? 16:11:20  
23 Q. Have you ever used the phrase normative expectations 16:11:24

24 in describing the factors that influence smoking 16:11:28  
25 behavior among children? 16:11:28

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1 A. I have used it. 16:11:30  
2 Q. I'm using the same definition that you are using. 16:11:32  
3 A. I don't know what that is. Different people have 16:11:36  
4 very different interpretations of that word. 16:11:38  
5 Q. What interpretation have you used when you have used 16:11:40  
6 the term normative expectations as describing one of 16:11:44  
7 the environmental factors that increases a young 16:11:46  
8 person's risk of smoking? 16:11:48  
9 A. Well, norms are what an adolescent perceives to be 16:11:58  
10 what is okay for them to do, what they should do, 16:12:02  
11 what they might do, what everybody else is doing, 16:12:04  
12 what people their age are doing, what adults are 16:12:06  
13 doing. So normative expectations are measures of 16:12:08  
14 norms. 16:12:08  
15 Q. And isn't it true that another environmental factor 16:12:14  
16 that increases the risk of a young person's 16:12:18  
17 beginning to smoke is peer attitudes to smoking? 16:12:22  
18 A. Can I look at the Surgeon General's Report? 16:12:30  
19 Q. I'm just asking you, as you sit here today as an 16:12:34  
20 expert, and I'm reading from your expert report, 16:12:34  
21 that you are going to tell us about the 16:12:38  
22 environmental factors that increase the risk of a 16:12:40  
23 young person's beginning to smoke. 16:12:42  
24 And I'm asking you, is peer attitudes to 16:12:46  
25 smoking one of the environmental factors that 16:12:48

1 affects or increases the risk of a young person's 16:12:50  
2 beginning to smoke? 16:12:52

3 MS. WALBURN: Well, Professor Perry asked 16:12:54  
4 to look at a report that's in front of her, and I 16:12:56  
5 think that's entirely appropriate and I think it 16:13:00  
6 would be abusive for counsel not to allow us to 16:13:02  
7 proceed in that fashion. 16:13:04

8 BY MS. JOHNSON:

9 Q. Professor Perry, can you refer to page 6 of your 16:13:08  
10 expert report. 16:13:08

11 A. Yes. 16:13:08

12 Q. And I'm referring you to the portion where you've 16:13:10  
13 told us in your own words that you're going to talk 16:13:14  
14 about environmental factors. Do you see that? 16:13:16

15 A. Uh-hm. 16:13:16

16 Q. Okay. And without having to go to the library and 16:13:22  
17 read the Surgeon General's report, I'm just asking, 16:13:22  
18 as you sit here as an expert, whether one of the 16:13:26  
19 environmental factors that you're going to talk 16:13:28  
20 about is peer attitudes to smoking, either yes or no 16:13:30  
21 or you don't know? 16:13:32

22 MS. WALBURN: Objection. Counsel, I'm 16:13:34  
23 going to caution you on your abusive questioning of 16:13:40  
24 this witness. 16:13:40

25 Professor Perry has asked to look at a 16:13:42

1 document that is sitting right here in front of her 16:13:46  
2 on the counsel table, and it's perfectly appropriate 16:13:48  
3 for Professor Perry to look at that document right 16:13:52  
4 now. 16:13:52  
5 BY MS. JOHNSON:  
6 Q. Professor Perry, I'm asking you, as you sit here 16:13:54  
7 today, looking at your expert report, and based on 16:13:58  
8 the research that you've done to date, I'm not 16:14:02  
9 asking you to go off and do extra research or refer 16:14:04  
10 to a document, I'm just asking you, as you sit here 16:14:06  
11 today as an expert for your deposition, whether one 16:14:10  
12 of the environmental factors you're going to talk 16:14:10  
13 about, because you said you're going to talk about 16:14:14  
14 environmental factors, whether just one of them is 16:14:16  
15 peer attitudes to smoking? 16:14:16  
16 And you can say yes, or you can say no, or 16:14:20  
17 you can say I don't know. 16:14:22  
18 MS. WALBURN: Well, I'm going to object to 16:14:24  
19 the form of the question again. And I'm going to 16:14:24  
20 tell Professor Perry that if she would like to look 16:14:28  
21 at the report that's sitting right in front of her, 16:14:30  
22 she may do so right now. 16:14:30  
23 MS. JOHNSON: Let's go off the record 16:14:40  
24 since you're advising your witness to do research in 16:14:44  
25 the middle of a deposition when no question is 16:14:46

1 pending that requires this witness to do any 16:14:48  
2 research. 16:14:48

3 MS. WALBURN: Well, we're not going off 16:14:48  
4 the record. I hardly count this as doing research. 16:14:52  
5 The witness has voluntarily stated to you that she 16:14:56  
6 would like to look at a report that's sitting in 16:14:58  
7 front of her, and that's certainly her prerogative 16:15:00  
8 as a witness. 16:15:02  
9 I'd ask you not to harass this witness any 16:15:04  
10 further. 16:15:04  
11 BY MS. JOHNSON:  
12 Q. I see you've put the report down. Have you found 16:15:14  
13 the answer to my question? 16:15:16  
14 A. Yes. 16:15:16  
15 Q. And what is the answer to my question? 16:15:18  
16 A. I don't know. 16:15:18  
17 MS. WALBURN: I'll point out that after 16:15:22  
18 all your commotion, it took a matter of a few 16:15:24  
19 seconds for Professor Perry to locate what she was 16:15:26  
20 looking for in her report. 16:15:28  
21 BY MS. JOHNSON:  
22 Q. Does that include all the time that you prefaced it 16:15:30  
23 with your objections and your discussions and your 16:15:32  
24 interruptions? 16:15:32  
25 MS. WALBURN: I was objecting because you 16:15:34  
  
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1 are conducting yourself in an entirely inappropriate 16:15:36  
2 manner in this deposition. 16:15:38  
3 BY MS. JOHNSON:  
4 Q. Professor Perry, do you intend to testify that one 16:15:46

5 of the environmental factors that increases the risk 16:15:50  
6 of a young person smoking is parental smoking 16:15:52  
7 behaviors? 16:15:54  
8 A. I plan to talk about parental smoking behaviors, but 16:16:06  
9 probably not as a risk factor because as you, I'm 16:16:12  
10 sure, found in looking at the research for this, 16:16:14  
11 that it's not a very clear answer having to do with 16:16:20  
12 parental smoking. 16:16:22  
13 So I will be talking about parental 16:16:24  
14 smoking, but I'm not sure I'm going to state that 16:16:26  
15 it's, in fact, a risk factor. 16:16:30  
16 Q. I don't believe I said parental smoking. I believe 16:16:32  
17 I said parental attitudes about smoking, which is 16:16:36  
18 different than parental smoking. So let me ask the 16:16:38  
19 question again. 16:16:38  
20 Do you intend to testify that one of the 16:16:40  
21 environmental factors that increases the risk of a 16:16:44  
22 young person's beginning to smoke is parental 16:16:48  
23 attitudes about smoking? 16:16:50  
24 MS. WALBURN: I'm going to object on the 16:16:52  
25 basis that counsel's question misstates the record 16:16:54

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1 and specifically misstates counsel's prior 16:16:56  
2 question. 16:16:58  
3 BY MS. JOHNSON:  
4 Q. Well, can you answer this new question that I just 16:17:02  
5 asked? 16:17:02  
6 A. Can I look at the Surgeon General's Report? 16:17:08  
7 MS. WALBURN: Yes, you may. 16:17:08

8 BY MS. JOHNSON:

9 Q. I'm taking this deposition today to understand what 16:17:10  
10 it is that you intend to tell us. And I understand 16:17:14  
11 you're going to do continuing research, and I 16:17:16  
12 understand you may go off and do more research. 16:17:18  
13 I'm asking you, as you sit here today, 16:17:20  
14 your expert report says you're going to talk about 16:17:22  
15 environmental factors that increase the risk of a 16:17:24  
16 young person's beginning to smoke. 16:17:26  
17 And I'm asking you if parental attitudes 16:17:30  
18 about smoking is something that you plan to 16:17:32  
19 discuss? 16:17:32  
20 A. I'm trying to answer your question. I've done years 16:17:36  
21 and years of research on this topic. I don't 16:17:38  
22 remember it all. That's why I brought these things 16:17:40  
23 here, so I could answer your questions. I try to do 16:17:44  
24 it very efficiently. 16:17:44  
25 MS. WALBURN: Professor Perry, you can go 16:17:48

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1 ahead and look at the Surgeon General's Report. 16:17:54  
2 THE WITNESS: (Witness complies.) 16:17:58  
3 BY MS. JOHNSON:

4 Q. Professor Perry, could you, for the record, tell us 16:18:08  
5 what you're looking at in the Surgeon General's 16:18:10  
6 Report that is going to tell you what you're going 16:18:12  
7 to tell us at the time of trial? 16:18:14  
8 MS. WALBURN: I'm going to object to the 16:18:16  
9 form. You can certainly tell counsel what you're 16:18:18



10 looking at.

11 MR. GARY WILSON: I think there's a 16:18:20

12 question pending now. Let's have one question at a 16:18:22

13 time, please. 16:18:24

14 THE WITNESS: What question would you like 16:18:26

15 me to answer? 16:18:26

16 BY MS. JOHNSON:

17 Q. What are you looking at in the Surgeon General's 16:18:30

18 Report that's going to inform you about what your 16:18:32

19 opinions are? 16:18:32

20 MS. WALBURN: I'm going to object to the 16:18:32

21 form and, Counsel, really, you're way out of line 16:18:34

22 here. Can we ask some proper questions? 16:18:36

23 MR. PERRY WILSON: I think you're way out 16:18:38

24 of line. 16:18:40

25 MS. WALBURN: Well, I would ask you to 16:18:40

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1 just observe. 16:18:42

2 MR. PERRY WILSON: You're just 16:18:42

3 interjecting yourself for the sole purpose of 16:18:44

4 wasting time at this point. 16:18:46

5 MS. WALBURN: I think the record will 16:18:46

6 speak quite clearly. 16:18:48

7 MR. PERRY WILSON: It does. 16:18:48

8 BY MS. JOHNSON:

9 Q. Could you, for the record, tell us what page you're 16:18:52

10 reading from? 16:18:54

11 A. I'm looking at chapter 4 of the Surgeon General, 16:18:58

12 Psychosocial Risk Factors for Initiating Tobacco 16:19:02

13 Use, and there are two lists that I like to refer to 16:19:08  
14 that summarize what we found when we did the review 16:19:14  
15 of the literature. 16:19:14  
16 Q. What year was that report written? 16:19:18  
17 A. The report was written and finished being -- it was 16:19:22  
18 written in 1992 and 1993. 16:19:24  
19 Q. And was that completed -- 16:19:26  
20 A. And was published in 1994. 16:19:28  
21 Q. And then was that completed before the dissertation 16:19:32  
22 of Mary Codd was completed? 16:19:38  
23 A. Oh, yes. 16:19:38  
24 Q. So if there were errors in Mary Codd's dissertation 16:19:42  
25 that conflicted with what you found in the Surgeon 16:19:46

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1 General's Report, surely you would have corrected 16:19:48  
2 that at the time you were her primary dissertation 16:19:50  
3 advisor, wouldn't you have? 16:19:52  
4 MS. WALBURN: Objection; form. 16:19:54  
5 THE WITNESS: I don't really know what 16:19:56  
6 you're referring to. If you found errors in Mary 16:19:56  
7 Codd's dissertation, I wish you would tell me about 16:20:00  
8 it. 16:20:02  
9 Many studies, the reason I'm looking at 16:20:04  
10 this particular table, is not all studies come to 16:20:08  
11 the same conclusion, so you look at the compilation 16:20:12  
12 of evidence, not each and every single study. That 16:20:16  
13 would be really not the way science works. 16:20:22  
14 So in this particular table I'm looking at 16:20:24

15 right now, if Mary Codd's dissertation had something 16:20:28  
16 in it that was contrary to that, that's just one 16:20:30  
17 more piece of evidence. And I certainly wouldn't 16:20:34  
18 tell her not to do her dissertation if that's what 16:20:36  
19 her data said. 16:20:38

20 BY MS. JOHNSON:

21 Q. Are you done? 16:20:44

22 A. I am done. 16:20:44

23 Q. Okay. As one of the environmental factors that may 16:20:50

24 increase the risk of a young person's beginning to 16:20:54

25 smoke, are you going to testify about the school 16:20:56

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1 environment? 16:20:56

2 MS. WALBURN: Objection; form. 16:21:06

3 THE WITNESS: I don't know at this point. 16:21:14

4 I may or may not. 16:21:14

5 BY MS. JOHNSON:

6 Q. Your expert report also says you're going to talk 16:21:16

7 about behavioral factors that increase the risk of a 16:21:20

8 young person's beginning and continuing to smoke. 16:21:22

9 Isn't it a fact and wouldn't you agree 16:21:24

10 with me that academic performance is a behavioral 16:21:26

11 factor that could influence the risk of a young 16:21:28

12 person's beginning and continuing to smoke? 16:21:30

13 A. Academic achievement is related to onset of 16:21:38

14 smoking. 16:21:38

15 Q. And wouldn't you agree with me that another 16:21:44

16 behavioral factor that may be related to the onset 16:21:48

17 of smoking is risk-taking behavior of a young 16:21:50

18 person? 16:21:50

19 A. No, I don't think I'd agree with that. 16:21:56

20 Q. Do you think that risk-taking behavior of a young 16:21:58

21 person is irrelevant when it comes to the behavioral 16:22:00

22 factors that increase the risk of a young person's 16:22:04

23 beginning to smoke? 16:22:04

24 A. No, I don't think it's irrelevant. I think smoking 16:22:06

25 is a risk factor for other risk-taking behaviors as 16:22:10

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1 we stated quite clearly in the Surgeon General's 16:22:12

2 Report. 16:22:12

3 So, yes, they are related to each other, 16:22:14

4 but I think that smoking almost always precedes 16:22:18

5 other adolescent risk-taking behaviors. 16:22:22

6 Q. Does smoking cause children to engage in risk-taking 16:22:26

7 behaviors? 16:22:26

8 A. I think we stated that very clearly that smoking may 16:22:32

9 or may not cause these behaviors, but these 16:22:36

10 behaviors are very unlikely to occur without 16:22:38

11 adolescents previously engaging in smoking. 16:22:40

12 Q. So really all you're saying is the behaviors are 16:22:42

13 correlated; isn't that correct? 16:22:44

14 A. No, I'm not saying that, because it's over time. 16:22:48

15 Correlated means at the same time. Causation is 16:22:50

16 temporally. 16:22:52

17 Q. So you're saying it does or does not cause risky 16:22:54

18 behavior? 16:22:54

19 MS. WALBURN: Objection; asked and 16:22:56

20 answered. 16:22:56  
21 THE WITNESS: I said that it very 16:22:58  
22 likely -- that it's unlikely someone engages in 16:23:02  
23 risk-taking behavior at time 2 without having 16:23:04  
24 engaged in smoking at time 1. 16:23:06

25 BY MS. JOHNSON:

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1 Q. So you're not saying that smoking causes the risky 16:23:10  
2 behavior? 16:23:10

3 MS. WALBURN: Objection; asked and 16:23:12  
4 answered now three times. 16:23:12

5 THE WITNESS: I think I've answered that. 16:23:14

6 BY MS. JOHNSON:

7 Q. Maybe you could answer -- I apologize for not being 16:23:18  
8 an expert in epidemiology, and I think these 16:23:22  
9 concepts of correlation and cause are terms of art, 16:23:26  
10 and I'm just trying to understand what you're 16:23:28  
11 saying. 16:23:28

12 And I just want to understand, are you 16:23:32  
13 saying that you have found that smoking causes young 16:23:38  
14 people to engage in risky behavior? 16:23:42

15 MS. WALBURN: Objection; asked and 16:23:44  
16 answered. 16:23:44

17 THE WITNESS: We're saying that smoking is 16:23:50  
18 a risk factor for other risky behaviors. 16:23:52

19 BY MS. JOHNSON:

20 Q. And by risk factor, are you saying it causes it? 16:23:56

21 MS. WALBURN: Objection; asked and 16:23:58  
22 answered. 16:23:58

23 THE WITNESS: It increases the risk that 16:24:02  
24 it's going to happen. 16:24:02  
25 BY MS. JOHNSON:

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1 Q. But does it cause it? That's my question. Does it 16:24:06  
2 cause it? 16:24:06  
3 MS. WALBURN: Objection; asked and 16:24:06  
4 answered. 16:24:08  
5 THE WITNESS: I think I explained that. 16:24:08  
6 BY MS. JOHNSON:  
7 Q. Does it cause it? 16:24:10  
8 MS. WALBURN: Objection; asked and 16:24:12  
9 answered. 16:24:12  
10 THE WITNESS: I think I explained that. 16:24:12  
11 BY MS. JOHNSON:  
12 Q. You've taken a number of courses in statistics, 16:24:24  
13 haven't you? 16:24:24  
14 A. I've taken my fair share, yes. 16:24:28  
15 Q. And these concepts of correlation and cause and risk 16:24:30  
16 factor are very, very complicated, aren't they? 16:24:34  
17 A. To some people I guess I would imagine they're 16:24:36  
18 complicated. They're not that complicated to me. 16:24:40  
19 Q. To some people they're complicated and to someone 16:24:42  
20 like myself who's not trained in epidemiology, I'm 16:24:46  
21 really just asking a simple question. 16:24:46  
22 And that is: When you say that smoking is 16:24:50  
23 a risk factor for risky behaviors, does that mean 16:24:54  
24 that smoking causes the risky behavior? 16:25:02

1 answered and form of the question. 16:25:04

2 BY MS. JOHNSON:

3 Q. You understand what I'm saying, don't you? 16:25:08

4 MS. WALBURN: Objection. Now we have 16:25:10

5 another multiple on top of the question. 16:25:12

6 THE WITNESS: What I'll say is that it's 16:25:16

7 very unlikely if someone smoked or someone engaged 16:25:20

8 in a high-risk behavior at time 2 for them not to 16:25:24

9 have previously smoked. 16:25:26

10 And so you could say that, you know -- so 16:25:40

11 I'm not sure I would go on record to say smoking 16:25:42

12 caused these behaviors, but they certainly increase 16:25:46

13 the risk that they will occur. 16:25:48

14 BY MS. JOHNSON:

15 Q. And you also say that you're going to talk about the 16:25:58

16 social environment of adolescents. Other than 16:26:02

17 cigarette advertising, what factors are part of the 16:26:06

18 social environment of an adolescent? 16:26:10

19 MS. WALBURN: Objection; form. 16:26:14

20 THE WITNESS: Well, I characterize the 16:26:22

21 social environment actually in a different way than 16:26:24

22 how you have been talking about it, and that is I 16:26:28

23 characterize it more at the level of social 16:26:32

24 psychology in terms of norms, role models, 16:26:36

25 opportunities, barriers, support, the major 16:26:38

1       theoretical factors that operate an environment,       16:26:42  
2       that influence adolescent behavior.       16:26:44  
3 BY MS. JOHNSON:  
4 Q.    Could you name some of those for me?       16:26:46  
5 A.    I just did. I just named those for you, norms, role       16:26:54  
6       models, social support, opportunities, barriers.       16:27:00  
7 Q.    And so by role models, what do you mean by role       16:27:16  
8       models?       16:27:16  
9 A.    What I mean is that adolescents see people in their       16:27:22  
10       environment engaging in certain behaviors and       16:27:24  
11       getting positive or negative reinforcement because       16:27:28  
12       of those behaviors.       16:27:30  
13               And so those role models influence their       16:27:32  
14       behavior, either because they're attractive to the       16:27:38  
15       adolescent or because those role models appear to be       16:27:42  
16       getting positively reinforced for their behavior.       16:27:44  
17 Q.    What would make a role model attractive to an       16:27:48  
18       adolescent?       16:27:48  
19 A.    A role model would be attractive if they seem to be       16:27:54  
20       succeeding in areas that was important to an       16:27:58  
21       adolescent.       16:27:58  
22 Q.    Are role models often individuals who are close to       16:28:04  
23       the adolescent?       16:28:06  
24 A.    Sometimes.       16:28:08  
25 Q.    Do you agree or disagree with the following       16:28:16



1 statement: The single most important factor in 16:28:20  
2 determining when and how cigarettes are first tried 16:28:22  
3 is peers? 16:28:24  
4 A. Well, I would agree with the statement with a 16:28:32  
5 caveat, and that is that the notion of peers isn't 16:28:38  
6 -- that is a very -- it isn't a very clear notion. 16:28:42  
7 That is, is it peer behavior? How did 16:28:46  
8 that behavior come about? I think there's a 16:28:48  
9 misconception that peers come up with ideas on their 16:28:56  
10 own. 16:28:56  
11 Q. When you talk about smoking, what do you mean by 16:29:12  
12 experimentation? 16:29:12  
13 A. I'll need to look at the Surgeon General's Report 16:29:20  
14 again. 16:29:20  
15 Q. Okay. But just looking at your own expert report 16:29:24  
16 where you use the word, you don't know what you mean 16:29:26  
17 by the word experimentation? 16:29:28  
18 MS. WALBURN: Objection; form. And, 16:29:28  
19 again, when Professor Perry indicates that she'd 16:29:34  
20 like to look at the Surgeon General's Report, which 16:29:34  
21 is sitting in front of her, that is certainly 16:29:38  
22 appropriate to do. 16:29:38  
23 BY MS. JOHNSON:  
24 Q. Professor Perry, I'm not asking you to conduct 16:29:42  
25 research. I'm asking you to look at your expert 16:29:44

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1 report on page 6. 16:29:46  
2 MS. WALBURN: Well, again, I'm going to 16:29:48  
3 object to counsel's statements. Professor Perry is 16:29:50

4 not conducting research here. She is looking at a 16:29:54  
5 document that is sitting right in front of her. And 16:29:58  
6 to the extent that she wants to look at a document, 16:30:00  
7 she is certainly entitled to do so. 16:30:02  
8 BY MS. JOHNSON:  
9 Q. Can you tell us what pages you're reviewing for your 16:30:12  
10 definition that you use in your expert report, what 16:30:16  
11 pages of the Surgeon General's Report are you 16:30:16  
12 referring to for the answer to my question? 16:30:18  
13 A. I'm referring to page 126. 16:30:22  
14 Q. And is the -- 16:30:24  
15 A. Of the Surgeon General's Report. 16:30:24  
16 Q. Is the answer to any question about what you meant 16:30:28  
17 when you used the word experimentation in your 16:30:30  
18 expert report on that page? 16:30:30  
19 A. It is. 16:30:32  
20 Q. Okay. And what is -- what did you mean, now that 16:30:36  
21 you've looked at the Surgeon General's Report, by 16:30:38  
22 the term experimentation? 16:30:38  
23 A. That they were in an experimental stage where 16:30:42  
24 adolescents smoke repeatedly but irregularly, not on 16:30:48  
25 a regular basis. 16:30:50

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1 Q. Can you define repeatedly but not regularly? 16:30:52  
2 A. Regularly in this case we're talking about -- well, 16:31:02  
3 less than once a week. Regular is at least once a 16:31:10  
4 week. And experimentation would be not that 16:31:12  
5 frequently and not in a regular basis. 16:31:16

6 Q. And does experimentation have other definitions in 16:31:20  
7 other sentences? 16:31:20  
8 A. It might. 16:31:22  
9 Q. And when you refer to regular smokers on page 6 of 16:31:30  
10 your expert statement, what do you mean by regular 16:31:32  
11 smoker here? 16:31:32  
12 A. Well, in that case we're talking about regular 16:31:36  
13 smoker in adulthood, and I think then we're talking 16:31:38  
14 about daily, a daily smoker. 16:31:40  
15 Q. And how much does a person need to smoke every day 16:31:42  
16 in order to be classified as a daily smoker? 16:31:46  
17 MS. WALBURN: Objection; form. 16:31:48  
18 THE WITNESS: I think that people just ask 16:31:56  
19 the question are you a smoker to adults, and they 16:32:00  
20 answer yes or no at that point. 16:32:02  
21 Do you smoke every day? The person 16:32:04  
22 answers yes or no. And that's usually how that data 16:32:08  
23 is collected with adults. So I believe in this 16:32:12  
24 research, I can't say if it's two packs a day or, 16:32:16  
25 you know, I can't -- they report themselves to be 16:32:20

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1 daily smokers. 16:32:20  
2 BY MS. JOHNSON:  
3 Q. Now I'm asking about regular smoker. 16:32:24  
4 A. Yes. 16:32:24  
5 Q. Not daily smoker. 16:32:26  
6 A. Well, this is regular smoker in adulthood. 16:32:28  
7 Q. Okay. So a -- well, let's define adulthood. 16:32:32  
8 Adulthood in this sentence means what? 16:32:34

9 A. I believe in this case it means 21 and over. 16:32:40  
10 Q. Not 19? 16:32:40  
11 A. No, not 19. 16:32:42  
12 Q. Not 20? 16:32:44  
13 A. No, not 20. I don't usually refer to adults at that 16:32:46  
14 age. 16:32:46  
15 Q. So regular smoker could be a person who smokes one 16:32:52  
16 cigarette every day or two packs every day? 16:32:54  
17 A. Regular smoker in adulthood generally means a daily 16:33:00  
18 smoker. 16:33:00  
19 Q. And that could be a daily smoker who smokes one 16:33:02  
20 cigarette a day or a pack a day or two packs a day; 16:33:06  
21 is that correct? 16:33:06  
22 MS. WALBURN: Objection; asked and 16:33:08  
23 answered, misstates the testimony, and form. 16:33:10  
24 THE WITNESS: Yeah, I think I answered 16:33:12  
25 that question. 16:33:12

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1 BY MS. JOHNSON:  
2 Q. I know your lawyer has told you over and over again 16:33:16  
3 that you've answered the question, but I still have 16:33:18  
4 a question, so I'm going to ask it again. 16:33:22  
5 In this particular sentence, you have told 16:33:24  
6 us that regular smokers in adulthood means someone 16:33:26  
7 who reports that they smoke on a daily basis; is 16:33:30  
8 that correct? Do I have that right? 16:33:32  
9 MS. WALBURN: Objection; asked and 16:33:34  
10 answered. 16:33:34

11 THE WITNESS: Yes, that's correct. 16:33:34  
12 BY MS. JOHNSON:  
13 Q. And that could be a person who is an adult who 16:33:38  
14 smokes anywhere from one cigarette on up on a daily 16:33:42  
15 basis? 16:33:42  
16 MS. WALBURN: Objection; asked and 16:33:44  
17 answered. 16:33:44  
18 BY MS. JOHNSON:  
19 Q. You're nodding your head yes; is that yes? 16:33:46  
20 A. No, the answer to that is I don't know. In fact, 16:33:52  
21 I'm quite sure when they refer to daily smokers that 16:33:54  
22 they, on average, smoke quite a bit more than one 16:33:58  
23 cigarette per day. So I don't actually know that 16:34:00  
24 answer to that. 16:34:02  
25 Q. You keep talking about daily smokers, and I want to 16:34:04

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1 talk about regular smoker, not daily smoker. 16:34:06  
2 A. Well, I know, we defined regular -- I defined for 16:34:12  
3 you regular smoker in adulthood. Regular smoker in 16:34:14  
4 adulthood generally in the epidemiologic literature 16:34:20  
5 are daily smokers. 16:34:22  
6 So that's where I got that term, regular 16:34:24  
7 smoker in adulthood, daily smoker. 16:34:26  
8 Q. What would you call an adult who smokes one 16:34:44  
9 cigarette a day? 16:34:44  
10 MS. WALBURN: Objection; form. 16:34:44  
11 THE WITNESS: A smoker. 16:34:46  
12 BY MS. JOHNSON:  
13 Q. Okay. In the next study you talk about people who 16:34:46

14 smoke one to five cigarettes per day. Are they 16:34:48  
15 regular smokers? 16:34:48  
16 A. Yes. 16:34:50  
17 Q. Even though they're high school seniors? 16:34:54  
18 A. Yes, especially because they're high school 16:34:56  
19 seniors. 16:34:56  
20 Q. Is there a different definition of a regular smoker 16:35:08  
21 between adults and high school seniors? 16:35:10  
22 MS. WALBURN: Objection; asked and 16:35:12  
23 answered. 16:35:12  
24 THE WITNESS: There's a different 16:35:18  
25 definition between regular smoker for adults and 16:35:22

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1 smoker for adolescents. 16:35:22  
2 BY MS. JOHNSON:  
3 Q. Is there such a thing as a regular smoker among 16:35:26  
4 adolescents? 16:35:28  
5 A. Yes, we went over that I think several times 16:35:32  
6 already. 16:35:32  
7 Q. Well, I thought I understood it, but you said 16:35:34  
8 smokers for adolescents and you didn't put a tag on 16:35:40  
9 it like daily or regular, you just called them 16:35:42  
10 smokers, and that's why I asked the question. 16:35:44  
11 MS. WALBURN: Objection; misstates the 16:35:46  
12 testimony, asked and answered, and form. Is there a 16:35:48  
13 question? 16:35:50  
14 THE WITNESS: I got lost there. So maybe 16:35:52  
15 we should just start over on it. 16:35:54

16 BY MS. JOHNSON:

17 Q. What is a person who is classified as an ever smoked 16:36:08

18 daily? 16:36:08

19 A. Where are you looking? 16:36:14

20 Q. Are you familiar with category of ever smoked 16:36:16

21 daily? 16:36:18

22 A. Are you looking at something in particular? 16:36:22

23 Q. I'm asking you if you're familiar with that phrase? 16:36:24

24 A. Oh, I guess you're not looking at anything in 16:36:28

25 particular. 16:36:28

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1 Ever smoked daily? Yeah, that sounds like 16:36:34

2 something you'd read in the adult literature, adult 16:36:38

3 smoking literature. 16:36:38

4 Q. What does that mean ever smoked daily? 16:36:40

5 A. It means they ever smoked, did they ever smoke on a 16:36:44

6 daily basis. 16:36:44

7 Q. One cigarette? 16:36:46

8 A. I'm not absolutely sure. I know there's some cutoff 16:36:58

9 like minimum of having smoked 200 cigarettes, so I 16:37:04

10 don't know the exact definition of ever smoked 16:37:06

11 daily. 16:37:06

12 Q. Is ever smoked daily the same thing as smoking 16:37:10

13 daily? 16:37:12

14 A. Smoking daily usually means you're currently smoking 16:37:16

15 daily. Ever smoked daily means have you ever smoked 16:37:18

16 daily, so it could include people who quit. 16:37:22

17 Q. What about ever tried a cigarette, is that another 16:37:24

18 category of smokers? 16:37:26

19 A. Sure. 16:37:30  
20 Q. And how would you define a person who had ever tried 16:37:34  
21 a cigarette? 16:37:36  
22 A. Well, again, there's different definitions. Some 16:37:38  
23 people say it's a few puffs, some people say it has 16:37:44  
24 to be a whole cigarette, some people say it has to 16:37:46  
25 be two or three cigarettes. So "tried" again means 16:37:50

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1 different things. 16:37:50  
2 Q. And is that the same thing as first use? 16:37:54  
3 A. First use also has very different -- has a kind of 16:38:00  
4 range of definitions, whether it's a puff, few 16:38:04  
5 puffs, or whether it's smoking a whole cigarette, or 16:38:06  
6 first use being the first two or three cigarettes. 16:38:08  
7 So all of those have some range in the literature. 16:38:10  
8 Q. So would you be categorized as someone who engaged 16:38:16  
9 in first use in 1979? 16:38:18  
10 A. I guess I would be. 16:38:24  
11 Q. So you would be classified as someone who ever tried 16:38:26  
12 a cigarette? 16:38:28  
13 A. I'd be categorized as someone who took a puff on a 16:38:32  
14 cigarette, so I'm sure in some literature somewhere 16:38:34  
15 who cared about, you know, 29 year olds having their 16:38:40  
16 first puff, I might be categorized that way. 16:38:44  
17 Q. Your expert report tells us that you intend to 16:39:16  
18 testify -- I'm referring now to page 10 of the 16:39:20  
19 Cheryl Perry expert report -- Dr. Perry will testify 16:39:28  
20 about the advertising campaigns used by tobacco 16:39:30



21 companies over the years. 16:39:32  
22 Would you please tell us which advertising 16:39:34  
23 campaigns you intend to testify about that have been 16:39:36  
24 used by the tobacco companies over the years? 16:39:38  
25 MS. WALBURN: I'm going to object on the 16:39:42

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1 same bases as prior questions on this. I think it 16:39:44  
2 might be helpful for you, Counsel, if Dr. Perry 16:39:46  
3 could have some documents in front of her to give 16:39:50  
4 you a more fulsome response to this question. 16:39:58  
5 MS. JOHNSON: I'll satisfy for something 16:40:00  
6 less than a fulsome response. 16:40:02  
7 BY MS. JOHNSON:  
8 Q. Can you describe for me when you drafted this expert 16:40:04  
9 report and you wrote that sentence that said you 16:40:08  
10 were going to testify about advertising campaigns 16:40:08  
11 used by the tobacco companies over the years, and I 16:40:14  
12 don't expect you to remember all of them and I'm not 16:40:16  
13 trying to trick you into saying that it's only these 16:40:18  
14 and not others, I'm just trying to understand which 16:40:22  
15 advertising campaigns or some of the advertising 16:40:26  
16 campaigns that you were referring to when you typed 16:40:28  
17 this sentence into the report? 16:40:30  
18 A. When I typed this sentence, I was referring to the 16:40:34  
19 advertising campaigns that were reviewed quite 16:40:38  
20 comprehensively I think in the chapter 5 of the 16:40:42  
21 Surgeon General's Report, plus any additional 16:40:46  
22 campaigns that I felt were noteworthy, given the 16:40:52  
23 documents and other things I reviewed. 16:40:54

24 But I think if you want to know which 16:40:56  
25 campaigns, that's probably a good chapter to read. 16:41:00

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1 Q. What page does it start on? 16:41:02  
2 A. It starts on page 159. 16:41:12  
3 Q. So if I refer to the chapter -- is that chapter 6? 16:41:22  
4 A. No, that's chapter 5. 16:41:24  
5 Q. If I refer to chapter 5, then I will know which 16:41:30  
6 advertising campaigns you're going to talk about -- 16:41:32  
7 MS. WALBURN: Objection; asked and 16:41:36  
8 answered. 16:41:36  
9 MS. JOHNSON: Can I finish my sentence, 16:41:36  
10 please? 16:41:36  
11 MS. WALBURN: Well, I thought you had and 16:41:38  
12 the witness was starting to speak, so I thought it 16:41:40  
13 was a proper time to interpose an objection. Do you 16:41:42  
14 want to continue? 16:41:44  
15 BY MS. JOHNSON:  
16 Q. -- at the time of trial? 16:41:44  
17 MS. WALBURN: Objection; asked and 16:41:46  
18 answered, and misstates the testimony. And I'll 16:41:48  
19 also point out that I previously told you that a 16:41:50  
20 listing of advertising documents that may be used at 16:41:56  
21 trial are included on the list of documents provided 16:42:00  
22 to you in Exhibit 2507. 16:42:04  
23 BY MS. JOHNSON: 16:42:06  
24 Q. Dr. Perry, I'm referring now to document 2507. As 16:42:10  
25 we sit here today, you never saw this document 16:42:12

1	before today, did you?	16:42:12
2	MS. WALBURN: Objection; asked and	16:42:14
3	answered, and misstates the prior testimony.	16:42:16
4	THE WITNESS: I believe I said to you that	16:42:18
5	I saw it at the end of May 1997.	16:42:22
6	BY MS. JOHNSON:	
7	Q. Other than the advertising campaigns that are	16:42:30
8	referred to in chapter 5 of the Surgeon General's	16:42:40
9	Report, as you sit here today, can you identify any	16:42:42
10	other advertising campaigns that you were referring	16:42:44
11	to when you typed this sentence in your expert	16:42:46
12	report?	16:42:46
13	MS. WALBURN: Objection; asked and	16:42:48
14	answered.	16:42:48
15	THE WITNESS: I'll be using the	16:42:50
16	advertising campaigns referred to in the Surgeon	16:42:56
17	General's Report, plus my ongoing review of	16:43:00
18	advertising documents that I've been provided,	16:43:06
19	research that comes out, et cetera.	16:43:08
20	BY MS. JOHNSON:	
21	Q. Other than reviewing the Surgeon General's Report	16:43:12
22	and reviewing the documents that your lawyers give	16:43:14
23	you, have you or do you intend to conduct --	16:43:18
24	MS. JOHNSON: And you can quit waving at	16:43:20
25	me until I finish the sentence.	16:43:22

1 MS. WALBURN: I'm not waving at you. But, 16:43:24  
2 you know, you are asking questions that are entirely 16:43:26  
3 improper and you're not giving me a chance to 16:43:28  
4 interpose an objection, so I just want to make sure 16:43:30  
5 the minute I hear something that is objectionable in 16:43:32  
6 your question that I get an opportunity to interpose 16:43:34  
7 an objection. 16:43:36  
8 MR. PERRY WILSON: What you're actually 16:43:40  
9 doing is putting your hand up in front of the 16:43:42  
10 witness. 16:43:42  
11 MS. WALBURN: Because your counsel is 16:43:44  
12 talking over me and over the witness and it's 16:43:46  
13 entirely improper. And I would caution you to sit 16:43:50  
14 and observe. 16:43:50  
15 MR. PERRY WILSON: It's actually quite 16:43:50  
16 distracting. 16:43:52  
17 MS. WALBURN: Well, you can look the other 16:43:54  
18 way. 16:43:54  
19 MR. PERRY WILSON: No, you're trying to 16:43:54  
20 distract the witness in the process. 16:43:56  
21 MS. WALBURN: Am I distracting you, 16:43:58  
22 Professor Perry? 16:44:00  
23 THE WITNESS: You're not a very 16:44:02  
24 distracting person, actually. 16:44:04  
25 BY MS. JOHNSON:

1 Q. Are you aware of any cigarette advertising research 16:44:10

2	that is currently underway by anyone?	16:44:14
3	MS. WALBURN: Objection; form.	16:44:16
4	THE WITNESS: Yes.	16:44:32
5	BY MS. JOHNSON:	
6	Q. Could you describe that for me.	16:44:34
7	A. The Robert Wood Johnson Foundation has funded a set	16:44:44
8	of research studies, and I think some of them are on	16:44:48
9	advertising.	16:44:48
10	And that's why I hesitated there because I	16:44:52
11	haven't reviewed the grants that they funded, and so	16:44:56
12	I'm not sure about that, but I wouldn't be surprised	16:45:02
13	if there was something on advertising in there. For	16:45:06
14	example, I think they do do a survey on brands,	16:45:10
15	teenage brand selection.	16:45:14
16	Also the office on smoking and health	16:45:16
17	might be conducting -- they usually do ongoing	16:45:20
18	research, monitoring future project is ongoing every	16:45:24
19	year annually, the national household survey on drug	16:45:26
20	abuse, the Minnesota -- all of those might have	16:45:30
21	things on cigarette advertising and promotions in	16:45:34
22	them.	16:45:36
23	Q. Do you know anyone who's currently conducting	16:45:46
24	research on cigarette advertising?	16:45:46
25	MS. WALBURN: Objection; asked and	16:45:48

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1 answered. 16:45:50

2 THE WITNESS: I don't know. I might. 16:45:58

3 BY MS. JOHNSON:

4 Q. Can you give me their names? 16:46:00

5 A. No, I don't -- that's why I don't know. You know, I 16:46:04  
6 don't want to say -- well, no, I don't, because then 16:46:06  
7 you might find out that someone is doing it and then 16:46:10  
8 you'll say I lied, which I didn't. I can't, you 16:46:12  
9 know, I don't know at this point. 16:46:14  
10 Q. Do you plan to follow-up to see if these groups are 16:46:20  
11 doing any research that might be helpful to you in 16:46:24  
12 your testimony? 16:46:24  
13 A. I plan to continue my review of the peer reviewed 16:46:34  
14 scientific literature and, you know, and if other 16:46:36  
15 literature comes forward from one of my colleagues, 16:46:40  
16 I would look at that, too. 16:46:40  
17 Q. On page 10 you say that cigarette -- well, you say 16:46:50  
18 you use the word ubiquitous in the second sentence 16:46:54  
19 in the first full paragraph. Cigarettes have been 16:46:56  
20 one of the most heavily marketed products over the 16:47:00  
21 years. The ubiquitous advertising, marketing and 16:47:02  
22 promotion, et cetera, et cetera. What definition of 16:47:04  
23 ubiquitous are you using? 16:47:08  
24 A. I mean it's everywhere. 16:47:10  
25 Q. Is that your definition of ubiquitous? 16:47:16

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1 A. Yes. 16:47:18  
2 MS. WALBURN: Objection; asked and 16:47:18  
3 answered. 16:47:18  
4 BY MS. JOHNSON:  
5 Q. Do you mean that there is more advertising for 16:47:22  
6 cigarettes than there is for any other product? 16:47:24

7 A. No, I don't mean that. I think it's like number two 16:47:34  
8 behind cars. It's in the report, I think. The IOM 16:47:40  
9 report also has it, given that cigarettes aren't on 16:47:44  
10 television and radio, that may be a number one in 16:47:50  
11 billboard advertising. So it's a heavily marketed 16:47:58  
12 product, I think, like number 2 in expenditures. 16:48:02  
13 I'm not going to -- I don't want to be 16:48:04  
14 held accountable for that. It's one of the most 16:48:08  
15 heavily-marketed products. 16:48:10  
16 Q. Well, that's my question. When you say heavily 16:48:18  
17 marketed, to me that means a lot of money spent. Is 16:48:22  
18 that what you mean by heavily marketed? Are you 16:48:24  
19 referring to the amount of money spent? 16:48:24  
20 A. Both to the amount of money spent as well as 16:48:28  
21 relative to other products. 16:48:30  
22 Q. And you think only cars are more heavily advertised 16:48:38  
23 than cigarettes? 16:48:38  
24 MS. WALBURN: Objection; asked and 16:48:40  
25 answered. 16:48:40

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1 THE WITNESS: I can't -- I'd need to look 16:48:44  
2 through a couple of things to give you a more 16:48:46  
3 thorough -- I believe the exact statement we used in 16:48:52  
4 the Surgeon General's Report, and I think the IOM 16:48:56  
5 report too, used exactly that same statement with 16:48:58  
6 some backup to that. 16:49:00  
7 BY MS. JOHNSON:  
8 Q. Which statement are you referring to? 16:49:08  
9 A. The very first statement. 16:49:08

10 Q. Cigarettes have been one of the most heavily 16:49:12  
11 marketed products over the years? 16:49:14  
12 A. Uh-hm. 16:49:16  
13 Q. That statement's not in quotes? 16:49:16  
14 A. No, it is not in quotes. 16:49:18  
15 Q. Is that your statement? 16:49:20  
16 A. All of these are my statements, unless they're in 16:49:24  
17 quotes, but they may be paraphrases of research, 16:49:28  
18 other research. 16:49:30  
19 Q. Of what significance is it that cigarettes are 16:49:36  
20 heavily marketed? 16:49:40  
21 MS. WALBURN: Objection; form. 16:49:42  
22 THE WITNESS: It's significant because 16:49:54  
23 virtually every child and adolescent in America sees 16:50:00  
24 cigarette advertising and promotional items, so that 16:50:06  
25 the reason that it's important or that it's, you 16:50:08

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1 know, reason I put this in is that children are 16:50:12  
2 exposed on a regular basis, consistent basis, to 16:50:16  
3 cigarette advertising and promotional activities. 16:50:18  
4 BY MS. JOHNSON:  
5 Q. I see that you brought the Institute of Medicine, 16:50:30  
6 Growing up Tobacco Free, and the Surgeon General's 16:50:32  
7 Report along with you, and you have referred to them 16:50:34  
8 several times. 16:50:34  
9 Do you adopt everything in the 1994 16:50:38  
10 Surgeon General's Report? 16:50:38  
11 A. Well, you know, the 1994 surgeon -- as I mentioned 16:50:42



12 before, was written in nineteen ninety -- I think we 16:50:46  
13 finished it in 1993, so it's now four years old. 16:50:50  
14 At the time it was published, I agreed 16:50:54  
15 just about with not every single sentence, but just 16:50:58  
16 about with everything in this report. And I had 16:51:00  
17 less role in the IOM report, the final conclusion of 16:51:06  
18 the IOM report. 16:51:06  
19 We have more research now to go on, so 16:51:10  
20 some of our conclusions and so forth might be 16:51:14  
21 different if we wrote it in 1997. 16:51:18  
22 Q. What document do you consider to be the most recent 16:51:22  
23 embodiment of the state of research? 16:51:24  
24 MS. WALBURN: Objection; form. 16:51:26  
25 THE WITNESS: I would -- they're very 16:51:36

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1 different -- they're different documents for 16:51:40  
2 different purposes. I relied more on the Surgeon 16:51:42  
3 General's Report because I know it better. I worked 16:51:46  
4 -- I know it better. 16:51:46  
5 BY MS. JOHNSON:  
6 Q. Do you know Barbara Lynch? 16:51:50  
7 A. I do know who she is. 16:51:52  
8 Q. Do you know whether she's participating in the 16:51:54  
9 tobacco industry litigation? 16:51:54  
10 A. I don't know that. 16:51:56  
11 Q. What does the literature show is the direct ratio of 16:52:04  
12 positive purchase intent with actual behavior? 16:52:08  
13 MS. WALBURN: Objection; form. 16:52:10  
14 THE WITNESS: Can you tell me what you're 16:52:14

15           referring to, or where you're referring? I wrote           16:52:18  
16           that but -- oh, there it is.           16:52:18  
17 BY MS. JOHNSON:  
18 Q.   That's okay, I can move on. Page 12 of your           16:52:26  
19       document, the first full paragraph, you refer to           16:52:30  
20       another category of smokers called, quote,           16:52:34  
21       "starters," end quote.           16:52:36  
22                    Could you please define for me what           16:52:40  
23       starters are?           16:52:40  
24 A.   Well, I think I used starters because it's in the           16:52:44  
25       tobacco industry documents. I believe Brown &           16:52:52

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1       Williamson documents use that term starters. So I           16:52:56  
2       don't, sitting here today, I don't remember the           16:53:00  
3       exact definition whether it was included trying an           16:53:04  
4       experimentation or not. But that's where that term           16:53:10  
5       came from.           16:53:12  
6 Q.   But that's not a term that you use?           16:53:14  
7 A.   Oh, I might use it in -- but I don't think I used it           16:53:18  
8       in this report.           16:53:18  
9 Q.   And if you -- I'm sorry.           16:53:20  
10 A.   I may have.           16:53:20  
11 Q.   When you use the term starters, what do you use as a           16:53:26  
12       definition of starters?           16:53:28  
13                    MS. WALBURN: Objection; form.           16:53:28  
14                    THE WITNESS: If I use the term starters,           16:53:36  
15       I might refer to either kids who hadn't tried or           16:53:42  
16       kids who had tried cigarettes.           16:53:44

17 BY MS. JOHNSON:  
18 Q. And how would you identify someone as a starter who 16:53:46  
19 had never tried a cigarette? 16:53:48  
20 A. Because some kids are more susceptible or more 16:53:52  
21 vulnerable to starting. They may be more 16:53:56  
22 susceptible. 16:53:56  
23 Q. You note in your expert report on page 15 that the 16:54:06  
24 tobacco companies have directed only comparatively 16:54:10  
25 minor resources to these programs, and you're 16:54:14

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1 referring to smoking education programs; is that 16:54:18  
2 correct?  
3 A. I'm referring, yes, to The Tobacco Institute, and I 16:54:24  
4 think there are other industries involved in smoking 16:54:28  
5 education programs for kids. 16:54:28  
6 Q. How much money have the tobacco companies directed 16:54:32  
7 at smoking education programs? 16:54:34  
8 A. I don't know the exact figure, but I can get it from 16:54:42  
9 Mr. Much's -- Must's expert report. 16:54:46  
10 Q. Who is Mr. Must? 16:54:50  
11 A. He's an expert for this. 16:54:50  
12 Q. Do you mean Mr. Much? 16:54:52  
13 A. Much. 16:54:52  
14 Q. And in your expert opinion, how much money would be 16:54:56  
15 enough for the tobacco industry to spend on smoking 16:55:00  
16 education programs? 16:55:00  
17 MS. WALBURN: Objection; form. 16:55:02  
18 THE WITNESS: How much would be enough? 16:55:04  
19 You mean your entire advertising and promotional 16:55:08

20 budget. 16:55:10  
21 BY MS. JOHNSON:  
22 Q. How much would be enough -- 16:55:12  
23 A. Your entire advertising and promotional budget. 16:55:16  
24 Q. Oh, that's your answer? 16:55:18  
25 A. Yes, that's my answer. 16:55:18

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1 Q. Are you in favor of a ban on advertising for tobacco 16:55:22  
2 products? 16:55:22  
3 A. I'm in favor of regulating advertising, cigarette 16:55:26  
4 advertising. 16:55:26  
5 Q. Are you in favor of a ban on cigarette advertising? 16:55:30  
6 MS. WALBURN: Objection; asked and 16:55:32  
7 answered. 16:55:32  
8 THE WITNESS: I'm not in favor of a ban on 16:55:34  
9 advertising. I'm in favor of regulating cigarette 16:55:36  
10 advertising. 16:55:38  
11 BY MS. JOHNSON:  
12 Q. You list in your principal references something 16:55:42  
13 called Federal Register Tobacco Industry's Comments 16:55:48  
14 before the United States Food and Drug 16:55:50  
15 Administration, Volume VII, what is that? 16:55:52  
16 A. Those are the tobacco industry's comments on the FDA 16:55:58  
17 recommendation. 16:56:04  
18 Q. Is that the only volume that you reviewed of the 16:56:12  
19 tobacco industry's comments that were submitted to 16:56:14  
20 the FDA? 16:56:14  
21 A. I believe so. It was a huge volume that had to do 16:56:26

22 with youth. 16:56:30  
23 Q. Do you recall when you first reviewed that volume? 16:56:38  
24 A. I first looked at it several months ago. 16:56:42  
25 Q. And who gave it to you? 16:56:44

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1 A. I got it from the lawyers. 16:56:48  
2 Q. And by the lawyers, do you mean Roberta? 16:56:50  
3 A. It could be Roberta or Gary or Tara. 16:56:54  
4 Q. And did you ask them, "Hey, do you have any tobacco 16:56:56  
5 industry comments to FDA," or how did you come to 16:57:00  
6 know about this document? 16:57:00  
7 A. I don't actually remember. We -- 16:57:08  
8 MS. WALBURN: Well, then since we're 16:57:08  
9 getting into a sensitive area of potential 16:57:12  
10 privilege, and the witness has said she doesn't 16:57:14  
11 remember, I would ask to move on. 16:57:18  
12 BY MS. JOHNSON:  
13 Q. Did you review it? 16:57:18  
14 A. Did I review this volume? Yeah. 16:57:22  
15 Q. What were your reactions to it? 16:57:24  
16 MS. WALBURN: Objection; form. 16:57:26  
17 THE WITNESS: I had some problems with the 16:57:32  
18 arguments that were presented and, you know, I -- 16:57:36  
19 yeah, I had some problems with it. 16:57:38  
20 BY MS. JOHNSON:  
21 Q. Did you agree with anything in the volume? 16:57:40  
22 MS. WALBURN: Objection; form. 16:57:42  
23 THE WITNESS: Yeah, I agreed with some 16:57:46  
24 things in the volume. 16:57:48

1 Q. Do you recall, as you sit here today, what you 16:57:50  
2 agreed with? 16:57:50  
3 A. No. 16:57:52  
4 Q. Are you aware that the industry submission had many, 16:57:56  
5 many volumes? 16:57:58  
6 A. Well, I assume that because this was only volume 16:58:00  
7 VII, I mean, they usually don't start at volume 16:58:04  
8 VII. 16:58:04  
9 Q. And did your lawyers when they picked which volume 16:58:06  
10 to give you tell you that there were, in fact, other 16:58:08  
11 volumes on the topic of -- 16:58:12  
12 MS. WALBURN: Well -- 16:58:16  
13 MS. JOHNSON: May I finish my sentence? 16:58:18  
14 MS. WALBURN: Again, you don't clearly 16:58:20  
15 indicate when you're done. 16:58:22  
16 MS. JOHNSON: I'm indicating right now. 16:58:24  
17 MS. WALBURN: Excuse me, I'm speaking. So 16:58:24  
18 if you want to indicate to me when you're done, I'll 16:58:28  
19 wait until you're done. If I can't tell when I 16:58:28  
20 think you're done, then I'm going to start to 16:58:30  
21 object. 16:58:30  
22 MS. JOHNSON: Can you read back the 16:58:32  
23 sentence in which I was interrupted, please. 16:58:34  
24 (The requested portion read back.)  
25 MS. WALBURN: Yeah, and you can stop right 16:58:48

1           there because you know very well, Counsel, that it's   16:58:50  
2           improper to ask what the lawyers told. And I think   16:58:52  
3           you've got adequate answers for this line of       16:58:54  
4           questions, in any event.                               16:58:56  
5 BY MS. JOHNSON:  
6 Q.   Professor Perry, were you aware that there are other   16:59:08  
7       volumes that the tobacco industry submitted to the   16:59:12  
8       FDA on the topic of cigarette advertising?           16:59:16  
9                   MS. WALBURN: Objection; asked and       16:59:20  
10       answered.   16:59:20  
11                   THE WITNESS: Yes, I was aware.           16:59:24  
12 BY MS. JOHNSON:  
13 Q.   And did you ask to see any of the other volumes?   16:59:26  
14 A.   No, I didn't ask to see any other volumes.           16:59:30  
15 Q.   Why not?   16:59:30  
16 A.   Because I had enough to read, and I believe this   16:59:34  
17       volume had to do with youth, and I was particularly   16:59:38  
18       interested in the part having to do with youth.       16:59:40  
19                   MS. JOHNSON: If we can take a few minutes   16:59:48  
20       break, I think I can wrap it up today if you want to   16:59:50  
21       do that.   16:59:50  
22                   MS. WALBURN: Can you give us an estimate   16:59:52  
23       of how much more time you'd want?                   16:59:54  
24                   MS. JOHNSON: I think if we take a break   16:59:56  
25       now, I can wrap it up before 5:30.                   17:00:00

1 MS. WALBURN: I think we're okay with 17:00:04  
2 that, but I'd like to consult with Professor Perry 17:00:06  
3 first. Why don't we take a quick break and we'll be 17:00:08  
4 back in a few minutes.  
5 MR. WILSON: It's now 5:00, for the 17:00:12  
6 record. 17:00:12  
7 (Off the record.) 17:05:00  
8 MS. JOHNSON: Back on the record. 17:05:04  
9 MR. GARY WILSON: 5:05. 17:05:08  
10 BY MS. JOHNSON:  
11 Q. Professor Perry, have you ever talked with any 17:05:10  
12 tobacco company employees? 17:05:12  
13 A. Not that I know of. 17:05:22  
14 Q. Have you ever been present at any conferences where 17:05:26  
15 tobacco company employees have made presentations? 17:05:30  
16 A. Not that I know of. 17:05:36  
17 Q. Do you know personally any of the individuals who 17:05:42  
18 created the documents that you have reviewed and 17:05:46  
19 summarized? And by that I mean the internal tobacco 17:05:50  
20 company documents? 17:05:50  
21 A. No. Similar to my own academic research, I look at 17:05:56  
22 what's written. 17:05:56  
23 Q. But you've never spoken with any of the authors? 17:05:58  
24 A. Right. I don't believe I've talked to any of them. 17:06:02  
25 Q. And you don't know them personally? 17:06:04

1 A. No, I don't believe I know any of them personally. 17:06:06  
2 Q. And you've told us that you've taken a number of 17:06:14



3	courses in psychology; is that correct?	17:06:14
4	A. I have, yes.	17:06:14
5	Q. And would you agree with me that human behavior is	17:06:16
6	extremely complex?	17:06:18
7	MS. WALBURN: Objection; form.	17:06:22
8	THE WITNESS: I'm not sure I'd agree with	17:06:24
9	you. I think that we're getting a long way to	17:06:28
10	understanding why people behave the way they do.	17:06:30
11	BY MS. JOHNSON:	
12	Q. Would you agree with me that human behavior is	17:06:34
13	influenced by many factors?	17:06:38
14	MS. WALBURN: Objection; form.	17:06:40
15	THE WITNESS: I think human behavior is	17:06:42
16	influenced by three primary types of factors.	17:06:44
17	BY MS. JOHNSON:	
18	Q. And within each of those primary types, there are	17:06:48
19	many, many other types included; isn't that	17:06:52
20	correct?	17:06:52
21	A. Well, the difficulty that comes is that they all	17:06:56
22	interact, and so they all contribute, not	17:07:00
23	independently. They contribute by interacting with	17:07:04
24	each other, which is why we tend to group things.	17:07:06
25	Q. And because they interact with each other, that	17:07:08

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1	makes it even more complicated to understand,	17:07:12
2	doesn't it?	17:07:12
3	MS. WALBURN: Objection; form.	17:07:16
4	THE WITNESS: I didn't say it was	17:07:18
5	complicated to understand.	17:07:20

6 BY MS. JOHNSON:

7 Q. Are you saying that human behavior is simple? 17:07:22

8 A. I think I said that we've come a long way to 17:07:26

9 understanding human behavior and that it's not 17:07:30

10 horribly complex. 17:07:32

11 Q. Is it complex? 17:07:34

12 MS. WALBURN: Objection; asked and 17:07:36

13 answered. 17:07:38

14 BY MS. JOHNSON:

15 Q. Can you answer my question? 17:07:44

16 A. I'd say human behavior is somewhat complex. 17:07:48

17 MS. JOHNSON: Thank you. I have no 17:07:50

18 further questions. 17:07:50

19 MS. WALBURN: We're done. 17:07:50

20

21 (Off the record.) 17:12:06

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2 STATE OF MINNESOTA )

3 ) ss.

4 COUNTY OF HENNEPIN )

5

6 Be it known that the foregoing proceedings were

7 taken by Jennifer S. Sati, RPR, CRR on the 30th day

8 of July, 1997, at Minneapolis, Minnesota;

9 That I was then and there a Notary Public in  
10 and for the County of Hennepin, State of Minnesota,  
11 and that by virtue thereof, I was duly authorized to  
12 administer an oath;

13 That the Proceedings were recorded in stenotype  
14 by myself and transcribed into writing by  
15 computer-aided transcription, and that the  
16 transcript is a true record of the testimony given  
17 to the best of my ability;

18 Dated and signed this 15th day of August,  
19 1997.

20

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22

23

24 Jennifer S. Sati, RPR, CRR  
Court Reporter

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ERRATA SHEET

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RE: Minnesota Tobacco Litigation

3

Cheryl L. Perry, Ph.D

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I, Cheryl L. Perry, Ph.D., do hereby certify  
that I have read the foregoing transcript of the  
5 proceedings taken on July 30, 1997, and believe the  
same to be true and correct, except as follows:

6

PAGE LINE DESIRED CHANGE

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Date

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

PLEASE RETURN TO: Jennifer S. Sati, RPR, CRR  
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Minneapolis, Minnesota 55402-1519